

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

This Order Relates To:
ALL ACTIONS (except the securities action)

**ORDER GRANTING FINAL
APPROVAL OF THE CONSUMER
AND RESELLER DEALERSHIP 3.0-
LITER CLASS ACTION
SETTLEMENT**

In the fall of 2015 the public learned of Volkswagen’s deliberate use of a defeat device— software designed to cheat emissions tests and deceive federal and state regulators—in nearly 600,000 Volkswagen-, Porsche-, and Audi-branded turbocharged direct injection (“TDI”) diesel engine vehicles sold in the United States. Litigation quickly ensued, and those actions were consolidated and assigned to this Court as a multidistrict litigation (“MDL”). After months of intensive negotiations and with the assistance of a court-appointed settlement master, Plaintiffs and Defendants Volkswagen AG (“VWAG”); Volkswagen Group of America, Inc. (“VWGoA”); Audi AG; Porsche AG; and Porsche Cars North America, Inc. (“PCNA”) (collectively, “Volkswagen” or “Defendants”) reached a settlement that resolves consumer claims concerning certain 3.0-liter diesel TDI vehicles. (*See* Dkt. No. 2894.) The Court preliminarily approved the Settlement on February 16, 2017. (*See* Dkt. No. 2919.)

Settlement Class Counsel now move for final approval of the Settlement. (Dkt. No. 3088.) On May 11, 2017, the Court held a fairness hearing regarding final approval, during which three Class Members or attorneys for Class Members addressed the Court. Having considered the parties’ submissions, and with the benefit of oral argument, the Court GRANTS final approval of the Settlement. The Settlement is fair, reasonable, and adequate.

BACKGROUND

I. Factual Allegations

Over the course of six years, Volkswagen sold nearly 600,000 Volkswagen-, Audi-, and Porsche-branded TDI “clean diesel” vehicles, which it marketed as being environmentally friendly, fuel efficient, and high performing. Unbeknownst to consumers and regulatory authorities, Volkswagen installed in these cars a software defeat device that allowed the vehicles to evade United States Environmental Protection Agency (“EPA”) and California Air Resources Board (“CARB”) emissions test procedures. The defeat device senses whether the vehicle is undergoing emissions testing or being operated on the road. During emissions testing, the defeat device produces regulation-compliant results. When the vehicle is on the road, the defeat device reduces the effectiveness of the vehicles’ emissions control system. Only by installing the defeat device on its vehicles was Volkswagen able to obtain Certificates of Conformity from EPA and Executive Orders from CARB for its 2.0- and 3.0-liter diesel engine vehicles; in fact, these vehicles release nitrogen oxides at a factor of up to 40 times over permitted limits.

II. Procedural History

Consumers filed hundreds of lawsuits nationwide after Volkswagen’s use of the defeat device became public. On December 8, 2015, the Judicial Panel on Multidistrict Litigation (“JPML”) transferred 56 related actions, including numerous putative class actions, to this Court for coordinated pretrial proceedings in the above-captioned MDL. (Dkt. No. 1.) The JPML has since transferred an additional 1,349 tag-along actions to the Court. (Dkt. No. 3175.) Many MDL cases have also been filed directly in this Court. In January 2016, the Court appointed Elizabeth J. Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP as Lead Plaintiffs’ Counsel and Chair of the Plaintiffs’ Steering Committee (“PSC”), to which the Court named 21 other attorneys. (Dkt. No. 1084.) On September 2, 2016, Class Counsel filed its Amended Consolidated Consumer Class Action Complaint against 13 named defendants: VWAG; VWGoA; Audi AG; Audi of America, LLC; Porsche AG; PCNA; Martin Winterkorn; Mattias Müller; Michael Horn; Rupert Stadler; Robert Bosch GmbH; Robert Bosch, LLC; and Volkmar Denner. (Dkt. No. 1804.) The complaint asserts against Volkswagen claims under (1) the Racketeer Influenced and Corrupt

1 Organizations Act (“RICO”), 18 U.S.C. § 1962(c)-(d), and the Magnusson-Moss Warranty Act, 15
2 U.S.C. § 2301 *et seq.*; (2) state fraud, breach of contract, and unjust enrichment laws; and (3) all
3 fifty States’ consumer protection laws. Class Counsel also filed a Second Amended Consolidated
4 Reseller Dealership Class Action Complaint against the same 13 defendants; that complaint
5 asserts against Volkswagen RICO, fraud, failure to recall/retrofit, and unjust enrichment claims.
6 (Dkt. No. 1805.)

7 The MDL also includes actions brought by federal and state government entities. The
8 United States Department of Justice (“United States”) on behalf of EPA sued VWAG, VWGoA,
9 Audi AG, Porsche AG, Volkswagen Group of America Chattanooga Operations, LLC (“VW
10 Chattanooga”), and PCNA for claims arising under Sections 204 and 205 of the Clean Air Act, 42
11 U.S.C. §§ 7523 and 7524. The Federal Trade Commission (“FTC”) also brought an action against
12 VWGoA pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.
13 §53(b), for violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Additionally, the State of
14 California, on behalf of the People and CARB, sued VWAG, VWGoA, Audi AG, Porsche AG,
15 VW Chattanooga, and PCNA for violations of the Consumer Financial Protection Act, 12 U.S.C.
16 § 5536, and various California state laws.

17 In January 2016, the Court appointed former Director of the Federal Bureau of
18 Investigation Robert S. Mueller III as Settlement Master to oversee settlement negotiations. (Dkt.
19 No. 973.) The parties and government entities subsequently engaged in extensive negotiations,
20 which, in September and October 2016, resulted in the Court approving settlements and consent
21 decrees between Volkswagen and (1) consumers who purchased or leased 2.0-liter diesel engine
22 vehicles (Dkt. No. 2102); (2) the Volkswagen-branded dealerships (Dkt. No. 2807); and (3) EPA,
23 the FTC, and CARB with respects to claims relating to the 2.0-liter diesel engine vehicles (Dkt.
24 Nos. 1801; 2103-04). Today in separate orders, the Court also (1) approved the United States’
25 Second Partial Consent Decree, which together with an unopposed and previously granted Third
26 Partial Consent Decree (Dkt. No. 3155), fully resolves the United States’ claims against
27 Volkswagen relating to the 3.0-liter vehicles, and partially resolves California’s claims for
28 injunctive relief with respect to the 3.0-liter vehicles (Dkt. No. 3228); (2) entered the FTC’s

1 Amended Partial Stipulated Order for Permanent Injunction and Monetary Relief, which resolves
 2 the FTC's claims related to the 3.0-liter vehicles (Dkt. No. 3227); and (3) entered a California-
 3 only consent decree, with further resolves certain of the State's claims related to the 3.0-liter
 4 vehicles (Dkt. No. 3226).

5 The Court granted preliminary approval of the 3.0-liter Settlement on February 16, 2017.
 6 (Dkt. No. 2919.) In accordance with the Court's preliminary approval order, Plaintiffs filed a
 7 statement regarding their prospective request for attorneys' fees and costs on February 24, 2017
 8 and a motion for final approval on March 24, 2017. (Dkt. Nos. 2970, 3088.) The Notice
 9 Administrator implemented the court-approved Notice Program beginning February 16, 2017, by
 10 sending email notice to potential Class Members, and on February 24, 2017, the Notice
 11 Administrator mailed Notice of the proposed Settlement to potential Class Members by first class
 12 mail. (Dkt. No. 3190-3 ¶¶ 10-12; Dkt. No. 3190-4 ¶¶ 8-15.) By April 14, 2017, there were 32
 13 timely objections and 593 opt outs. (Dkt. No. 3190 at 6.)

14 SETTLEMENT TERMS¹

15 The key provisions of the Settlement are as follows.

16 I. The Settlement Class

17 The proposed Settlement Class consists of:

18 a nationwide class, including Puerto Rico, of all persons (this
 19 includes individuals who are United States citizens, residents,
 20 United States military, diplomatic personnel and employees living or
 21 stationed overseas, as well as entities) who, (1) at any time between
 22 September 18, 2015 and November 2, 2015, inclusive, owned or
 23 leased a Volkswagen, Audi, or Porsche 3.0-liter TDI vehicle in the
 24 United States or its territories (an "Eligible Vehicle," defined more
 25 fully in Section 2.40); or who (2) between November 3, 2015 and
 26 the Claim Submission Deadline for Eligible Owners and Lessees,
 27 inclusive, become the owner of an Eligible Vehicle in the United
 28 States or its territories; or who (3) own an Eligible Vehicle in the
 United States or its territories at the time of participation in the 3.0-
 liter Class Action Settlement Program. The Class includes Non-
 Authorized Dealers who otherwise meet the definition of the Class.

The following entities and individuals are excluded from the Class:

(a) Owners who acquired an Eligible Vehicle after September 18,

¹ A more detailed explanation of the Settlement terms can be found in the Court's preliminary approval order. (See Dkt. No. 2919.)

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2015, and sold it before November 2, 2015;

(b) Owners who acquired an Eligible Vehicle after November 2, 2015, and transferred title on or before January 31, 2017;

(c) Lessees of a Generation One Eligible Vehicle leased from a leasing company other than VW Credit, Inc., and lessees of a Generation Two Eligible Vehicle leased from a leasing company other than VW Credit, Inc. or Porsche Financial Services, Inc.;

(d) Owners whose Eligible Vehicle had a Branded Title of Assembled, Dismantled, Flood, Junk, Rebuilt, Reconstructed, or Salvage on September 18, 2015, and was acquired from a junkyard, salvage yard, or salvage dealer after September 18, 2015;

(e) Owners who sell or otherwise transfer ownership of their Eligible Vehicle after January 31, 2017 but on or before the Opt-Out Deadline, unless the Eligible Vehicle is (i) unintentionally damaged after January 31, 2017, in a manner that renders it a total loss (*i.e.*, “totaled”) and (ii) transferred to an insurance company or otherwise permanently removed from commerce;

(f) Defendants’ officers, directors and employees; Defendants’ affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; participants in Volkswagen’s Internal Lease Program and/or Porsche Associate Lease Program; and Authorized Dealers and Authorized Dealers’ officers and directors;

(g) Judicial officers and their immediate family members and associated court staff assigned to this case; and

(h) All those otherwise in the Class who or which timely and properly exclude themselves from the Class as provided in this 3.0-liter Class Action Agreement.

(Dkt. No. 2894 ¶ 2.23.)

An Eligible Vehicle under the Settlement means:

the Model Year 2009 through 2016 Volkswagen and Audi and Model Year 2013 through 2016 Porsche light-duty vehicles equipped with 3.0-liter TDI engines that (1) are covered, or purported to be covered, by the EPA Test Groups in the table [in paragraph 2.40]; (2) are, at any point during the period September 18, 2015 to January 31, 2017, registered with a state Department of Motor Vehicles or equivalent agency, or owned by a Non-Authorized Dealer in the United States or its territories that (a) holds title to the vehicle or (b) holds the vehicle by bill of sale; and (3) have not been modified pursuant to an Approved Emissions Modification. Eligible Vehicle also excludes any Volkswagen, Audi, or Porsche vehicle that was never sold or registered in the United States or its territories. A vehicle must be Operable to be considered an Eligible Vehicle for the purpose of the Buyback, Trade-In, Reduced Emissions Modification, or Emissions Compliant

1 Repair.

2 (*Id.* ¶ 2.40.)

3 Class Members are further categorized as Eligible Lessees, Eligible Former Lessees,
4 Eligible Owners, and Eligible Former Owners.

5 An Eligible Lessee is:

6 (1) the current lessee or lessees of an Eligible Vehicle with a lease
7 issued by VW Credit, Inc. (Generation One vehicles) or VW Credit,
8 Inc. or Porsche Financial Services, Inc. (Generation Two vehicles);
9 (2) a former lessee or lessees of an Eligible Vehicle who had an
10 active lease issued by VW Credit, Inc. (Generation One vehicles) or
11 VW Credit, Inc. or Porsche Financial Services, Inc. (Generation
12 Two vehicles) as of September 18, 2015 and/or November 2, 2015
13 and who surrendered or surrenders the leased Eligible Vehicle under
14 the terms of the lease after January 31, 2017, but before the Claim
15 Submission Deadline; or (3) the owner of an Eligible Vehicle who
16 had an active lease issued by VW Credit, Inc. (Generation One
17 vehicles) or VW Credit, Inc. or Porsche Financial Services, Inc.
18 (Generation Two vehicles) as of September 18, 2015 and/or
19 November 2, 2015, and acquired ownership of the previously leased
20 Eligible Vehicle at the conclusion of the lease after January 31,
21 2017. For avoidance of doubt, no person shall be considered an
22 Eligible Lessee by virtue of holding a lease issued by a lessor other
23 than VW Credit, Inc. or Porsche Financial Services, Inc.

24 (*Id.* ¶ 2.38.)

25 An Eligible Former Lessee is:

26 a lessee who leased an Eligible Vehicle from VW Credit, Inc.
27 (Generation One vehicles) or VW Credit, Inc. or Porsche Financial
28 Services, Inc. (Generation Two vehicles) as of September 18, 2015
and/or November 2, 2015, and who surrendered the leased Eligible
Vehicle under the terms of the lease on or before January 31, 2017.

29 (*Id.* ¶ 2.35.)

30 An Eligible Owner is:

31 the owner or owners of an Eligible Vehicle on September 18, 2015,
32 or the owner or owners who acquire an Eligible Vehicle after
33 September 18, 2015, but before the end of the Settlement Benefit
34 Period, except that the owner of an Eligible Vehicle who had an
35 active lease issued by VW Credit, Inc. (Generation One vehicles) or
36 VW Credit, Inc. or Porsche Financial Services, Inc. (Generation
37 Two vehicles) as of September 18, 2015 and/or November 2, 2015,
38 and purchased that previously leased Eligible Vehicle off lease after
January 31, 2017, shall be an Eligible Lessee. For avoidance of
doubt, an Eligible Owner ceases to be an Eligible Owner if he
transfers ownership of the Eligible Vehicle to a third party. A third

1 party who acquires ownership of an Eligible Vehicle thereby
 2 becomes an Eligible Owner if that third party otherwise meets the
 3 definition of an Eligible Owner, unless the third party acquired the
 4 Eligible Vehicle from an Eligible Lessee, in which case that third
 5 party will be an Eligible Lessee. An owner of an Eligible Vehicle
 6 will not qualify as an Eligible Owner while the Eligible Vehicle is
 7 under lease to any third party, although any such owner, including
 8 any leasing company other than VW Credit, Inc. or Porsche
 9 Financial Services, Inc., who otherwise meets the definition of an
 10 Eligible Owner would become an Eligible Owner if such lease has
 11 been canceled or terminated and the owner has taken possession of
 12 the vehicle. In exceptional cases, specific arrangements may be
 13 made with the leasing company, in consultation with the Claims
 14 Supervisor, such that, (1) without canceling or terminating the lease,
 15 the leasing company may be treated as an Eligible Owner and obtain
 16 (a) an Emissions Compliant Repair plus Lessee Repair Payment or
 17 (b) a Reduced Emissions Modification plus Owner Restitution, as
 18 appropriate, and (2) a lessor that takes possession of a leased
 19 Eligible Vehicle after the Claim Submission Deadline (or the end
 20 date of the Claim Program) may nonetheless be entitled to submit a
 21 Claim.

22 (*Id.* ¶ 2.39.)

23 An Eligible Former Owner is:

24 a person who purchased or otherwise acquired ownership of an
 25 Eligible Vehicle on or before September 18, 2015, and sold or
 26 otherwise transferred ownership of such vehicle after September 18,
 27 2015 but on or before January 31, 2017, or who acquired ownership
 28 of an Eligible Vehicle on or before November 2, 2015, and sold or
 otherwise transferred ownership of such vehicle after November 2,
 2015 but on or before January 31, 2017. For avoidance of doubt, a
 sale or transfer of ownership under this definition includes the
 transfer of ownership of an Eligible Vehicle to an insurance
 company.

(*Id.* ¶ 2.36.)

21 **II. Consumer Remedies**

22 Class Members may seek benefits under the Settlement during the Settlement Benefit
 23 Period, which runs from the entry of this Order until (1) September 30, 2019 for Generation One
 24 vehicles, or (2) April 30, 2020 for Generation Two vehicles.² (*Id.* ¶ 2.84.)

25 **A. Generation One (Model Years 2009-2012)**

26 Class Members who own or lease a Generation One vehicle have three possible options

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 28 ² Capitalized terms not otherwise defined in this Order are defined in the Settlement Agreement.
 (Dkt. No. 2894.)

1 under the Settlement: (1) Buyback / Lease Termination; (2) Trade-In; or (3) if approved by the
2 EPA and CARB, an emissions modification that would reduce the vehicle's emissions but not to
3 the levels of their original certification (a "Reduced Emissions Modification"). Eligible Former
4 Lessees and Eligible Former Owners are entitled to restitution.

5 **1. Buyback / Lease Termination**

6 The first option for Generation One vehicle owners is to receive a Buyback payment that
7 consists of Vehicle Clean Trade Value (or Vehicle Value) plus Owner Restitution. For Class
8 Members electing the Buyback option, the total payment will range from \$24,755 to \$57,157.
9 (Dkt. No. 3088 at 22-23.)

10 Vehicle Value is the Base Clean Trade Value adjusted for certain options and, in the case
11 of Eligible Owners and Former Owners, for mileage. (Dkt. No. 2894-1 at 7 ¶ 15.) Base Clean
12 Trade Value for each Eligible Vehicle refers to the Clean Trade value corresponding to that
13 vehicle in the September 2015 National Automobile Dealers Association ("NADA") Used Car
14 Guide, published in or around August 2015. (*Id.* ¶ 14.) Options adjustments are based on
15 Volkswagen or Audi original equipment manufacturer ("OEM")-installed options that are valued
16 in the September 2015 NADA Used Car Guide. (*Id.* ¶ 16.) Mileage adjustments are made using
17 the mileage adjustment table in the September 2015 NADA Used Car Guide. (*Id.* ¶ 17.)

18 Owner Restitution is composed of a fixed dollar amount that is the same for all Generation
19 One Eligible Vehicles (the "fixed component"), and a variable dollar amount (the "variable
20 component"). (*Id.* at 3 ¶ 8(i).) Owners who acquired a new vehicle at any point in time or a used
21 vehicle on or before September 18, 2015 will receive a fixed component of \$5,155 and a variable
22 component consisting of (1) the amount by which Vehicle Clean Retail Value exceeds Vehicle
23 Value, plus (2) state and local taxes on the Vehicle Clean Retail Value. (*Id.*) If Owner Restitution
24 would otherwise be less than \$6,000, the variable component will include an additional amount
25 sufficient to raise Owner Restitution to \$6,000. (*Id.*) Owners who acquired a used vehicle after
26 September 18, 2015 will receive the same amount just described unless (1) one or more Eligible
27 Former Owners timely file a valid claim related to the same vehicle, or (2) the Eligible Vehicle
28 was previously leased by someone else and the Eligible Former Lessee timely files a valid claim.

1 (*Id.*) In such instances, Owner Restitution will be half the amount described above.

2 The table below provides an illustrative Buyback calculation. (*See* Dkt. No. 2894-1 at 4.)
 3 As noted above, a Buyback payment includes Vehicle Clean *Trade* Value (or Vehicle Value) plus
 4 Owner Restitution. Vehicle Value below is \$22,825, assuming standard mileage. Owner
 5 Restitution consists of the fixed component of \$5,155 plus the variable component consisting of
 6 (1) the amount by which Vehicle Clean *Retail* Value (\$25,550) exceeds Vehicle Value (\$25,550 -
 7 \$22,825 = \$2,725), plus (2) the appropriate state and local tax rate multiplied by the Vehicle Clean
 8 Retail Value (6.35% of \$25,550 = \$1,622.43). The variable component thus equals \$4,347.43, and
 9 Owner Restitution totals \$9,502.43 (or \$5,155 + \$4,347.43). In this example, the total Buyback
 10 amount is \$32,327.43 (or \$22,825 + \$9,502.43).

Vehicle ID	100001
Description	2009 Q7 TDI Premium Plus
Vehicle Value	\$22,825 (assumes standard mileage)
Vehicle Clean Retail Value	\$25,550 (assumes standard mileage)
State and Local Tax Rate	Connecticut 6.35%
Tax on Vehicle Clean Retail Value	6.35% of \$25,550 = \$1,622.43
Difference between Vehicle Clean Retail Value and Vehicle Value	\$25,550 - \$22,825 = \$2,725
Owner Restitution	\$5,155.00 [fixed component] + \$4,347.43 [variable component: amount by which Vehicle Clean Retail Value exceeds Vehicle Value (\$2,725), plus tax (\$1,622.43)] + \$0 [amount necessary to bring total Owner Restitution to \$6,000] = \$9,502.43
Buyback Amount	\$22,825 + \$9,502.43 = \$32,327.43
Minimums	Owner Restitution is greater than \$6,000, and the Buyback Amount is greater than Retail Replacement Value, so the minimums are not implicated.

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26 Eligible Lessees who have an active lease of a Generation One Eligible Vehicle can
27 terminate their leases with no penalty for early termination and receive Lessee Restitution. (Dkt.
28 No. 2894 ¶ 5.4.) Lessee Restitution ranges from \$5,001 to \$6,615. (Dkt. No. 2840 at 19.) Lessee

1 Restitution consists of a fixed component of \$2,577.50 and a variable component that is one half
 2 of (1) the amount by which Vehicle Clean Retail Value exceeds Vehicle Value, added to (2) state
 3 and average local sales taxes on the Vehicle Clean Retail Value. (Dkt. No. 2894-1 at 5 ¶ 9(i).)

4 **2. Trade-In**

5 Owners of Generation One vehicles can choose to trade in their vehicle at a participating
 6 Volkswagen or Audi dealership and receive a Trade-In Credit at the dealer. (Dkt. No. 2894 ¶ 5.3.)
 7 The Trade-In Credit will be equal to the Buyback Amount to which that owner would be entitled
 8 in a Buyback.

9 **3. Reduced Emissions Modification**

10 The availability of this option will depend on whether EPA and CARB approve a Reduced
 11 Emissions Modification for a Class Member's Generation One vehicle. (*Id.* ¶ 5.5.) The expected
 12 timeline for Volkswagen to submit proposed Emissions Modifications for Generation One
 13 vehicles is set forth in the United States' Second Partial Consent Decree. (*See* Dkt. No. 2520-1.)
 14 If no Emissions Modification is approved for a particular make, model, and model year of
 15 Generation One vehicle, Class Members owning or leasing such vehicles will not be able to select
 16 a Reduced Emissions Modification. If no Emissions Modification exists, Class Members will be
 17 informed that they remain eligible for the Buyback and Trade-In options, and that they may opt
 18 out of the Settlement from August 1, 2018 to September 1, 2018. (Dkt. No. 2894 ¶ 2.66.) Owners
 19 that receive an approved Emissions Modification will also receive Owner Restitution.

20 **4. Restitution for Eligible Former Lessees and Eligible Former Owners**

21 Eligible Former Lessees are entitled to the same Lessee Restitution as Eligible Lessees.
 22 (*See* Dkt. No. 2894 ¶ 5.7; Dkt. No. 2894-1 at 5 ¶ 9.) Eligible Former Owners are entitled to
 23 receive Former Owner Restitution. (*See* Dkt. No. 2894 ¶ 5.8; Dkt. No. 2894-1 at 6 ¶ 10.) There
 24 can be no more than two Eligible Former Owners for each Eligible Vehicle. If only one Eligible
 25 Former Owner for a vehicle timely files a valid claim, Former Owner Restitution will be one half
 26 the amount of Owner Restitution, as calculated above. If two Eligible Former Owners timely file
 27 valid claims, Former Owner Restitution for each former owner will be 25% of Owner Restitution.
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1 **B. Generation Two (Model Years 2013-2016)**

2 The benefits available to Generation Two vehicle owners will depend on whether
3 Volkswagen can timely make available an approved Emissions Compliant Repair. (Dkt. No. 2894
4 ¶ 6.1.) An Emissions Compliant Repair would bring an Eligible Vehicle into compliance with
5 Certified Exhaust Emissions Standards and must be approved by the EPA and CARB. (*Id.*
6 ¶¶ 2.41, 2.6.)

7 An Emissions Compliant Repair will be considered timely if it is approved (i) on or before
8 the Decision Date for the Sub-Generation to which that Eligible Vehicle belongs, (ii) on or before
9 any subsequent date set by the Court, or (iii) if the Court does not find good cause for the
10 extension, during a 30-day extension period (of which there may be up to three) for which
11 Volkswagen agrees to make a \$500 extension payment, per vehicle per extension. (*Id.* ¶ 6.2; Dkt.
12 No. 2894-3 ¶ 35.) The Decision Dates for an Emissions Compliant Repair for each Sub-
13 Generation of Generation Two vehicles are as follows:

Sub-Generation	Decision Date for the Emissions Compliant Repair
2.1 SUV	November 8, 2017
2.2 SUV	October 23, 2017
2 PC	December 20, 2017

14 Volkswagen has agreed that an Emissions Compliant Repair will not result in “Reduced
15 Performance,” which the Settlement defines as a change in any of the following performance
16 metrics: (1) a reduction in calculated fuel economy using the EPA formula of more than 3 MPG;
17 (2) a decrease of greater than 5% in peak horsepower; or (3) a decrease of greater than 5% in peak
18 torque. (Dkt. No. 2894 ¶ 7.5.) In the event that an Emissions Compliant Repair causes Reduced
19 Performance, Volkswagen has agreed to make an additional payment of \$500 for each affected
20 Eligible Vehicle. (*Id.*) In the event that an Emissions Compliant Repair causes “a substantial,
21 material adverse degradation above and beyond the Reduced Performance levels specified,”
22 Plaintiffs reserve their right to seek, and Volkswagen reserves its right to oppose, additional
23 remedies through motion to the Court. (*Id.*)

24 In addition to an Emissions Compliant Repair, Eligible Owners and Eligible Lessees of
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1 Generation Two vehicles will be offered a Repair Participation Payment, ranging from \$7,039 to
 2 \$16,114 for owners, and \$2,000 for lessees. (Dkt. Nos. 3088 at 24; 2894-3 at 27-28.) For Eligible
 3 Owners, the Repair Payment will total 10% of the vehicle’s September 2015 NADA Clean Retail
 4 Value (adjusted for options, but not mileage), plus a fixed dollar amount of \$3,596.74. (Dkt. No.
 5 2894-3 at 27.) Half of the Repair Participation Payment will be made available to Eligible Owners
 6 and Eligible Lessees once Volkswagen verifies their claims; the other half will be paid when the
 7 Emissions Compliant Repair is made. (*Id.* at 27-28.) Volkswagen will also offer a “Class Bridge
 8 Warranty” to cover Generation Two vehicles through the Emissions Compliant Repair Decision
 9 Dates. (Dkt. No. 3088 at 25.) As with Generation One restitution, an Eligible Former Owner of a
 10 Generation Two vehicle will evenly split the Repair Participation Payment with a post-September
 11 18, 2015 Eligible Owner, and if there are two Eligible Former Owners, each will receive one
 12 quarter of the Repair Participation Payment. (*Id.*)

13 If an Emissions Compliant Repair is not timely approved for any sub-generation of
 14 Generation Two vehicles, Class Members associated with those vehicles will have all the rights
 15 and options available to Class Members with Generation One vehicles. (*Id.* at 33-34.)

16 **III. Distribution of Settlement Payments**

17 The Settlement requires Volkswagen to create and fund an Escrow Account, which will be
 18 used to compensate Class Members who submit valid claims under the Settlement. (Dkt. No.
 19 2894 ¶ 13.1.) The escrow account will be funded with an initial Funding Amount of \$252 million.
 20 If the funding level reaches the Minimum Balance, which will initially be set at \$168 million,
 21 Volkswagen must, within seven business days of being notified, deposit additional funds into the
 22 Escrow Account to bring the balance of the account back to the Funding Amount. (*Id.*) The
 23 Funding Amount and the Minimum Balance will be adjusted as described in the Settlement
 24 depending on whether an Emissions Compliant Repair is available for Generation 2.2 SUV
 25 vehicles by October 23, 2017. (*Id.* ¶¶ 13.2, 13.3.) Any unused funds at the end of the Settlement
 26 Benefit Period will revert to Volkswagen. (*Id.* ¶ 13.4) In the event that the Settlement is
 27 invalidated or terminated for any reason prior to conclusion of the Settlement Benefit Period, any
 28 unused funds in the Escrow Account will revert to Volkswagen. (*Id.* ¶ 13.5.)

1 **IV. Payment of Attorneys' Fees**

2 The Settlement further requires Volkswagen to pay reasonable attorneys' fees and costs.
 3 (Dkt. No. 2894 ¶ 14.1.) Class Counsel have agreed to seek no more than \$245 million in
 4 combined attorneys' fees and reasonable out-of-pocket costs with respect to the approximately
 5 \$1.24 billion in monetary benefits that Class Members will receive if all Generation Two vehicles
 6 achieve timely Emissions Compliant Repair approval without Reduced Performance. (Dkt. No.
 7 2970 at 3.) If certain events increase Class Members' monetary benefits—such as the delay or
 8 denial of an Emissions Compliant Repair for any group of Generation Two vehicles—Class
 9 Counsel may move for additional fees and costs in an amount no greater than 5% of the additional
 10 monetary benefits made available to Class Members. (*Id.*) Volkswagen will pay reasonable fees
 11 separate from the compensation provided to Class Members and the fees are subject to Court
 12 approval. (Dkt. No. 2894 ¶ 14.1.)

13 **V. Releases**

14 In exchange for benefits under the Settlement, Class Members agree to release all Released
 15 Claims against the Released Parties. The Settlement defines Released Parties as:

16 any person who, or entity that, is or could be responsible or liable in
 17 any way whatsoever, whether directly or indirectly, for the 3.0- liter
 18 TDI Matter. The Released Parties include, without limitation, (1)
 19 Volkswagen AG, Volkswagen Group of America, Inc. (d/b/a
 20 Volkswagen of America, Inc. or Audi of America, Inc.),
 21 Volkswagen Group of America Chattanooga Operations, LLC, Audi
 22 AG, Audi of America, LLC, VW Credit, Inc., VW Credit Leasing,
 23 Ltd., VCI Loan Services, LLC, Porsche Automobil Holding SE, Dr.
 24 Ing. h.c. F. Porsche AG, Porsche Cars North America, Inc., Porsche
 25 Financial Services, Inc., Porsche Leasing Ltd., and any former,
 26 present, and future owners, shareholders, directors, officers,
 27 employees, attorneys, affiliates, parent companies, subsidiaries,
 28 predecessors, and successors of any of the foregoing (the “VW and
 Porsche Released Entities”); (2) any and all contractors,
 subcontractors, and suppliers of the VW and Porsche Released
 Entities; (3) any and all persons and entities indemnified by any VW
 and Porsche Released Entity with respect to the 3.0-liter TDI Matter;
 (4) any and all other persons and entities involved in the design,
 research, development, manufacture, assembly, testing, sale, leasing,
 repair, warranting, marketing, advertising, public relations,
 promotion, or distribution of any Eligible Vehicle, even if such
 persons are not specifically named in this paragraph, including
 without limitation all Authorized Dealers, as well as non-authorized
 dealers and sellers; (5) Claims Supervisor; (6) Notice Administrator;
 (7) lenders, creditors, financial institutions, or any other parties that

1 financed any purchase or lease of an Eligible Vehicle; and (8) for
 2 each of the foregoing, their respective former, present, and future
 3 affiliates, parent companies, subsidiaries, predecessors, successors,
 4 shareholders, indemnitors, subrogees, spouses, joint ventures,
 5 general or limited partners, attorneys, assigns, principals, officers,
 6 directors, employees, members, agents, representatives, trustees,
 7 insurers, reinsurers, heirs, beneficiaries, wards, estates, executors,
 8 administrators, receivers, conservators, personal representatives,
 9 divisions, dealers, and suppliers. Notwithstanding the foregoing, this
 10 Release does not release any claims against Robert Bosch GmbH
 11 and Robert Bosch, LLC or any of its former, present, and future
 12 owners, shareholders, directors, officers, employees, attorneys,
 13 affiliates, parent companies, subsidiaries, predecessors, or
 14 successors unless the Court approves any settlement between Bosch
 15 and members of the Class in any way related to, or arising from, the
 16 3.0-liter TDI Matter.

17 (Dkt. No. 2894 ¶ 12.2.)

18 The Released Claims are defined as:

19 any and all claims, demands, actions, or causes of action of any kind
 20 or nature whatsoever, whether in law or in equity, known or
 21 unknown, direct, indirect or consequential, liquidated or
 22 unliquidated, past, present or future, foreseen or unforeseen,
 23 developed or undeveloped, contingent or noncontingent, suspected
 24 or unsuspected, whether or not concealed or hidden, arising from or
 25 in any way related to the 3.0-liter TDI Matter, including without
 26 limitation (1) any claims that were or could have been asserted in
 27 the Action; and (2) any claims for fines, penalties, criminal
 28 assessments, economic damages, punitive damages, exemplary
 damages, liens, injunctive relief, attorneys', expert, consultant, or
 other litigation fees or costs other than fees and costs awarded by the
 Court in connection with this Settlement, or any other liabilities, that
 were or could have been asserted in any civil, criminal,
 administrative, or other proceeding, including arbitration[.]

(*Id.* ¶ 12.3.)

Class Members expressly waive and relinquish any rights they may have under California
 Civil Code § 1542 or other similar federal or state laws. (*Id.* ¶ 12.6; *see* Cal. Civ. Code § 1542 (“A
 general release does not extend to claims which the creditor does not know or suspect to exist in
 his or her favor at the time of executing the release, which if known by him or her must have
 materially affected his or her settlement with the debtor.”).)

DISCUSSION – FINAL APPROVAL OF SETTLEMENT

I. Legal Standard

The Ninth Circuit maintains “a strong judicial policy” that favors class action settlements.
Allen v. Bedolla, 787 F.3d 1218, 1223 (9th Cir. 2015). Nevertheless, Federal Rule of Civil

1 Procedure 23(e) requires courts to approve any class action settlement. “[S]ettlement class actions
 2 present unique due process concerns for absent class members.” *Hanlon v. Chrysler Corp.*, 150
 3 F.3d 1011, 1026 (9th Cir. 1998). As a result, “the district court has a fiduciary duty to look after
 4 the interests of those absent class members.” *Allen*, 787 F.3d at 1223 (collecting cases).
 5 Specifically, courts must “determine whether a proposed settlement is fundamentally fair,
 6 adequate, and reasonable.” *Hanlon*, 150 F.3d at 1026; *see* Fed. R. Civ. P. 23(e)(2). In particular,
 7 where “the parties reach a settlement agreement prior to class certification, courts must peruse the
 8 proposed compromise to ratify both the propriety of the certification and the fairness of the
 9 settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).

10 Approval of a settlement is a two-step process. Courts first “determine[] whether a
 11 proposed class action settlement deserves preliminary approval and then, after notice is given to
 12 class members, whether final approval is warranted.” *In re High-Tech Employee Antitrust Litig.*,
 13 No. 11-CV-02509-LHK, 2014 WL 3917126, at *3 (N.D. Cal. Aug. 8, 2014). “At the fairness
 14 hearing, . . . after notice is given to putative class members, the court entertains any of their
 15 objections to (1) the treatment of the litigation as a class action and/or (2) the terms of the
 16 settlement.” *Ontiveros v. Zamora*, 303 F.R.D. 356, 363 (E.D. Cal. 2014) (citing *Diaz v. Trust*
 17 *Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989)). After the fairness hearing, the
 18 court determines whether the parties should be allowed to settle the class action pursuant to the
 19 agreed-upon terms. *See Chavez v. Lumber Liquidators, Inc.*, No. CV-09-4812 SC, 2015 WL
 20 2174168, at *3 (N.D. Cal. May 8, 2015) (citation omitted).

21 **II. Final Certification of the Settlement Class**

22 **A. Rule 23(a) and (b) Requirements**

23 A class action is maintainable only if it meets the four Rule 23(a) prerequisites:

- 24 (1) the class is so numerous that joinder of all members is impracticable;
- 25 (2) there are questions of law or fact common to the class;
- 26 (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- 27 (4) the representative parties will fairly and adequately protect the interests of the class.

28 Fed. R. Civ. P. 23(a). In a settlement-only certification context, the “specifications of the Rule . . .

1 designed to protect absentees by blocking unwarranted or overbroad class definitions . . . demand
 2 undiluted, even heightened, attention[.]” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620
 3 (1997). “Such attention is of vital importance, for a court asked to certify a settlement class will
 4 lack the opportunity, present when a case is litigated, to adjust the class, informed by the
 5 proceedings as they unfold.” *Id.*

6 In addition to the Rule 23(a) prerequisites, “parties seeking class certification must show
 7 that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Amchem*, 521 U.S. at 614. Rule
 8 23(b)(3), relevant here, requires that (1) “questions of law or fact common to class members
 9 predominate over any questions affecting only individual members” and (2) “a class action is
 10 superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed.
 11 R. Civ. P. 23(b)(3). The “pertinent” matters to these findings include:

- 12 (A) the class members’ interests in individually controlling the
 13 prosecution or defense of separate actions;
 14 (B) the extent and nature of any litigation concerning the
 15 controversy already begun by or against class members;
 16 (C) the desirability or undesirability of concentrating the litigation of
 17 the claims in the particular forum; and
 18 (D) the likely difficulties in managing a class action.

19 *Id.*

20 In its preliminary approval order, the Court carefully considered whether Plaintiffs
 21 satisfied the Rule 23(a) and (b)(3) requirements. (Dkt. No. 2919 at 20-24.) “Because the
 22 Settlement Class has not changed, the Court sees no reason to revisit the analysis of Rule 23[(a)
 23 and (b)].” *G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 7571789, at *11 (N.D.
 24 Cal. Nov. 25, 2015) (internal quotation marks and citation omitted).

25 **B. Rule 23(c) Requirements**

26 “Adequate notice is critical to court approval of a class settlement under Rule 23(e).”
 27 *Hanlon*, 150 F.3d at 1025. Rule 23(c)(2)(B) requires that “[f]or any class certified under Rule
 28 23(b)(3), the court must direct to class members the best notice that is practicable under the
 circumstances, including individual notice to all members who can be identified through
 reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “[T]he express language and intent of Rule
 23(c)(2) leave no doubt that individual notice must be provided to those class members who are

1 identifiable through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974).

2 **1. Implementation of the Notice Program**

3 The Court previously approved the form and content of the Notice, as well as the Notice
4 Program set forth in the Settlement. (Dkt. No. 2919 at 31-34; *see also* Dkt. Nos. 2894-2, 2894-3,
5 3044.) The Court also appointed Kinsella Media LLC (“KM”) as Notice Administrator to
6 implement the Notice Program. (Dkt. No. 2919 at 36.)

7 Starting February 24, 2017, Rust Consulting, Inc. (“Rust”), of which KM is a subsidiary,
8 mailed 8.5” x 11” color Postcard Notices to 57,010 potential Generation One Class Members;
9 135,715 potential Generation Two Class Members; and 69,626 non-Volkswagen, non-Porsche,
10 and non-Audi new car and used car dealers. (Dkt. Nos. 3190-3 ¶¶ 8, 10; 3190-4 ¶ 8.) The
11 Postcard Notices provided an overview of the Settlement and directed readers to the Settlement
12 Website and a toll-free number for more information and to access to the Long Form Notice. (*Id.*)
13 Rust obtained potential Class Members’ addresses through Volkswagen’s records and registration
14 data, and by purchasing a mailing list of non-Volkswagen/Audi new and used car dealers. (Dkt.
15 No. 3190-4 ¶¶ 5-6.) Over 95% of mailings have been delivered. (Dkt. No. 3190-3 ¶ 11.)

16 To supplement direct mail notice, Rust also sent three email notifications to at least 97,400
17 potential Class Members who provided an email address when registering for the Volkswagen and
18 Audi Goodwill Program, or for whom an email address was otherwise available. (*Id.* ¶ 12.) The
19 first email, sent between February 11 and February 18, 2017, provided a short overview of the
20 Settlement and directed Class Members to the Settlement Website. The second email, sent
21 between February 17 and February 24, 2017, included a copy of the Long Form Notice. The third
22 email, sent between March 28 and March 31, 2017, reminded readers about the Class Settlement
23 and included a link to an updated Long Form Notice, which the Court approved on March 15,
24 2017, and which included additional information about Reduced Performance metrics for
25 Generation Two vehicles. (*Id.*; Dkt. Nos. 3190-4 ¶¶ 13-15; 3037-1.)

26 The Notice Program also included notice by publication, both in print and digital form.
27 The print notification campaign included 45 strategically-placed notifications in national and
28 regional publications. Specifically, the Short Form Notice appeared as a color advertisement

1 (where available) in the Sunday edition of *The New York Times*; the daily edition of *The Wall*
 2 *Street Journal*; the daily edition of *USA Today*; both the Sunday and daily editions of three
 3 newspapers covering markets with 5,000 or more Eligible Vehicles; the Sunday edition of 10
 4 newspapers covering markets with 2,000-4,999 Eligible Vehicles; the weekly editions of 13
 5 Hispanic newspapers, with the Notice translated into Spanish; and the weekly editions of 13
 6 African American newspapers. (Dkt. No. 3190-3 ¶¶ 14-18, Ex. A.)

7 The digital and social media campaign consisted of publishing more than 70,516,550
 8 digital impressions on dozens of relevant websites and on leading social media platforms. (Dkt.
 9 No. 3190-3 ¶¶ 27, 19-26.) From February 15 to March 31, 2017, KM published targeted banner
 10 advertisements with a bold message and graphics on websites that Class Members visited,
 11 according to IHS Automotive data. (*Id.* ¶¶ 20-21.) And to specifically reach fleet owners and
 12 others interested in the automotive industry, banner advertisements appeared on the National
 13 Automobile Dealers Association (www.nada.org) website. (*Id.* ¶ 22.) KM also placed banner ads
 14 on websites associated with the following trade publications: *Automotive Fleet*, *Automotive News*,
 15 and *Auto Rental News*. (*Id.* ¶ 22.) An individual who clicked on a banner advertisement was
 16 taken directly to the Settlement Website, and targeted internet advertising generated 130,814
 17 clicks to the Settlement Website. (*Id.* ¶¶ 19-20.)

18 The digital media campaign also included Facebook, Instagram, and Twitter
 19 advertisements; banner and video advertisements published on a broad and diverse range of
 20 websites through the Google Display Network; and the use of sponsored keywords/phrases on all
 21 major search engines, including Google AdWords and Bing Microsoft Advertising. (*Id.* ¶¶ 23-25.)

22 All notice materials directed Class Members to the Settlement Website and toll-free
 23 telephone number. (Dkt. Nos. 2894-2; 2894-3; 3190-3 ¶ 32.) As of April 26, 2017, there had
 24 been 2,787 calls to the toll-free number related to the 3.0-liter Settlement. (Dkt. No. 3190-3 ¶ 32.)
 25 And as of April 28, 2017, the section of the Settlement Website related to the 3.0-liter Settlement
 26 had received 260,447 unique visits. (*Id.* ¶ 31.)

27 2. CAFA Compliance

28 The Class Action Fairness Act (“CAFA”) provides that “each defendant that is

1 participating in the proposed settlement shall serve upon the appropriate State official of each
 2 State in which a class member resides and the appropriate Federal official, a notice of the
 3 proposed settlement[.]” 28 U.S.C. § 1715(b). Volkswagen satisfied this notice requirement on
 4 February 2, 2017, when counsel mailed notice of the proposed Settlement to the United States
 5 Attorney General and all 50 States’ Attorneys General. (*See* Dkt. No. 3203 ¶ 2, Ex. A.)

6 3. Adequacy of Notice

7 The Court is satisfied that the Notice Program was reasonably calculated to notify Class
 8 Members of the proposed Settlement. The Notice “apprise[d] interested parties of the pendency of
 9 the action and afford them an opportunity to present their objections.” *Bourne Valley Court Trust*
 10 *v. Wells Fargo Bank, NA*, 832 F.3d 1154, 1158 (9th Cir. 2016) (quoting *Mennonite Bd. of*
 11 *Missions v. Adams*, 462 U.S. 791, 795 (1983)). Indeed, the Notice Administrator reports the
 12 Notice Program reached more than 90% of potential Class Members. (Dkt. No. 3190-3 ¶ 36.)

13 Several Class Members object that the Notice did not adequately inform them of the
 14 thresholds that would constitute “Reduced Performance” for Generation Two vehicles if an
 15 Emissions Compliant Repair is approved. This information, however, was provided in the
 16 updated Long Form Notice. Specifically, Question 36 asked, “How will the Emissions Compliant
 17 Repair affect my vehicle’s performance?” (Dkt. No. 3037-1 at 32.) In response to this question,
 18 Class Members were informed that:

19 As part of the Class Action Settlement, Defendants have
 20 represented that the Emissions Compliant Repair shall not result in
 21 Reduced Performance. Reduced Performance means a change in
 22 any of the following performance attributes: (1) a reduction
 23 calculated in fuel economy using the EPA formula of more than 3
 24 MPG; (2) a decrease of greater than 5% in peak horsepower; or (3)
 decrease of greater than 5% peak torque. These attributes will be
 measured by Volkswagen according to industry standards when it
 submits its proposed Emissions Compliant Repairs to EPA and
 CARB.

25 (*Id.*)

26 Although this information was not included in the Postcard Notices or the original Long
 27 Form Notice, the Notice Administrator took reasonable steps to alert Class Members of this more
 28 detailed information, sending an email with a link to the updated Long Form Notice to 97,414

1 potential Class Members between March 28 and March 31, 2017, two weeks before the opt-out
 2 and objection deadline. (Dkt. Nos. 3190-3; 3190-4 ¶¶ 13-15; 3037-1.) The updated Long Form
 3 Notice was also made available on the Settlement Website.

4 Further, the absence of the Reduced Performance specifics in the original Notice was not
 5 misleading. The original Long Form Notice explained that it was anticipated that Generation Two
 6 vehicles could be repaired “without *materially* reduced performance.” (Dkt. No. 2894-3 at 3
 7 (emphasis added).) Class Members were thus made aware that some reductions in performance
 8 were possible. The original Long Form Notice also informed Class Members that “[t]he impact
 9 [of a Reduced Emissions Modification] on your vehicle is not known at this time, but it will be
 10 disclosed to you if the EPA and CARB approve a Reduced Emissions Modification,” including
 11 “any effects that any Reduced Emissions Modification will have on your vehicle’s
 12 . . . performance[.]” (*Id.* at 21.) Class Members were therefore made aware that there was some
 13 uncertainty with respect to the impact of a Reduced Emissions Modification on their vehicles’
 14 performance. Moreover, as early as February 15, 2017, the Settlement Agreement—which
 15 specifically defines Reduced Performance in Section 7.5—was made available on the Settlement
 16 Website. (*See* Dkt. Nos. 3190-3 ¶ 30; 2894 ¶ 7.5.)

17 In light of the original Notice and the updated Long Form Notice, the Court concludes that
 18 the Class was adequately made aware of the potential Reduced Performance for Generation Two
 19 vehicles.

20 * * *

21 For the reasons discussed above, the Settlement Class satisfies Rules 23(a) and 23(b)(3),
 22 and the Class Notice satisfies Rule 23(c). Accordingly, the Court grants final class certification.

23 **III. Fairness, Adequacy, and Reasonableness**

24 Courts may approve a class action settlement “only after a hearing and on finding that it is
 25 fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Courts assessing the fairness of a
 26 settlement generally weigh:

- 27 (1) the strength of the plaintiff’s case; (2) the risk, expense,
 28 complexity, and likely duration of further litigation; (3) the risk of
 maintaining class action status throughout the trial; (4) the amount

1 offered in settlement; (5) the extent of discovery completed and the
 2 stage of the proceedings; (6) the experience and views of counsel;
 (7) the presence of a governmental participant; and (8) the reaction
 of the class members of the proposed settlement.

3 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

4 But where, as here, the parties negotiate a settlement before a class has been certified,
 5 “courts must peruse the proposed compromise to ratify both the propriety of the certification and
 6 the fairness of the settlement.” *Staton*, 327 F.3d at 952. Pre-class certification settlements “must
 7 withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest
 8 than is ordinarily required under Rule 23(e) before securing the court’s approval as fair.” *In re*
 9 *Bluetooth Prods. Liability Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (citing *Hanlon*, 150 F.3d at
 10 1026). This heightened scrutiny “ensure[s] that class representatives and their counsel do not
 11 secure a disproportionate benefit ‘at the expense of the unnamed plaintiffs who class counsel had a
 12 duty to represent.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Hanlon*,
 13 150 F.3d at 1027). As such, courts must evaluate the settlement for evidence of collusion. *Id.*

14 Because “[c]ollusion may not always be evident on the face of a settlement, . . . courts
 15 therefore must be particularly vigilant not only for explicit collusion, but also for more subtle
 16 signs that class counsel have allowed pursuit of their own self-interests and that of certain class
 17 members to infect the negotiations.” *In re Bluetooth*, 654 F.3d at 947. Signs of subtle collusion
 18 include, but are not limited to:

- 19 (1) when counsel receive a disproportionate distribution of the
 20 settlement, or when the class receives no monetary distribution but
 class counsel are amply rewarded,
 21 (2) when the parties negotiate a “clear sailing” arrangement
 providing for the payment of attorneys’ fees separate and apart from
 class funds, which carries “the potential of enabling a defendant to
 22 pay class counsel excessive fees and costs in exchange for counsel
 accepting an unfair settlement on behalf of the class”; and
 23 (3) when the parties arrange for fees not awarded to revert to
 24 defendants rather than be added to the class fund[.]

25 *Id.* (internal quotations and citations omitted).

26 **A. The *Churchill* Factors**

27 **1. Strength of Plaintiffs’ Case**

28 The first factor does not favor settlement. “Approval of a class settlement is appropriate

1 when plaintiffs must overcome significant barriers to make their case.” *G.F.*, 2015 WL 7571789,
2 at *8 (citing *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 851 (N.D. Cal. 2010)).
3 Such barriers are mostly lacking here, as Plaintiffs acknowledge they have a strong case (*see* Dkt.
4 No. 3088 at 34), and liability is not at issue: Volkswagen admits to installing and failing to
5 disclose the defeat device in its TDI diesel engine vehicles, which it marketed as environmentally
6 friendly.

7 Plaintiffs also have strong support for their requested relief. Class Members paid for
8 vehicles that lacked certain attributes that Volkswagen had marketed as being present, which
9 would likely support damages. (Stockton Decl., Dkt. No. 3088-1 ¶ 12.) And although rescission
10 is “an extraordinary remedy and is not available when there is an adequate remedy at law,” *Ward*
11 *v. TheLadders.com, Inc.*, 3 F. Supp. 3d 151, 164 (S.D.N.Y. 2014), here Plaintiffs have a strong
12 case for rescission of Generation One vehicle purchases, as it is not possible to timely bring these
13 vehicles into compliance with EPA and CARB emission requirements. (*See* Kull Decl., Dkt. No.
14 1784-2 ¶ 16 (“[T]he facts underlying the ‘clean diesel’ litigation make it probable that courts
15 would interpret these rules [regarding rescission] liberally in favor of an Eligible Owner seeking
16 rescission and restitution against Volkswagen.”).) Because Plaintiffs claims against Volkswagen
17 are strong, this factor does not favor final approval.

18 **2. Risk, Expense, Complexity, and Likely Duration of Further Litigation**

19 Though Plaintiffs have strong claims, the merits of those claims are balanced by the risk,
20 expense, and complexity of the case, as well as the likely duration of further litigation. *See In re*
21 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458-59 (9th Cir. 2000). Should Class Counsel proceed
22 with litigating Plaintiffs’ claims to conclusion, any recovery would likely come years in the future
23 and at far greater expense. In comparison, approval of the Settlement will require Volkswagen to
24 move quickly to repair Eligible Vehicles, or otherwise remove them from the road—a key priority
25 since the outset of this case. (*See* Dkt. No. 365 at 5:7-6:6.) The Settlement requires Volkswagen
26 to fund an Escrow Account used to compensate Class Members within 10 days of the Court’s final
27 approval order (Dkt. No. 2894 ¶ 13.1), and the Buyback claims-process for Eligible Owners and
28 Lessees of Generation One vehicles must begin within 15 days of final approval. (*See* Dkt. No.

1 2894-4 at 3.) The benefits available to Generation Two vehicle owners will depend on whether
 2 Volkswagen can timely make available an Emissions Compliant Repair. (Dkt. No. 2894 ¶ 6.1.)
 3 But even then, the latest Decision Date for an Emissions Compliant Repair is December 20,
 4 2017—with up to three 30-day extensions—giving Volkswagen a time-limited opportunity to fix
 5 the vehicles it believes can be fully repaired. (*See id.* ¶¶ 6.2, 6.4.) Thus, while Plaintiffs would
 6 likely prevail on their claims, the Settlement provides benefits much sooner than if litigation were
 7 to continue—compensating Class Members now and limiting additional environmental damage.
 8 The second *Churchill* factor therefore supports final approval.

9 **3. Risk of Maintaining Class Action Status throughout Trial**

10 The potential difficulties in obtaining and maintaining class certification weigh in favor in
 11 final approval. Although there does not appear to be any issue with maintaining class certification
 12 at this point, if the parties had not settled, Volkswagen could have opposed Plaintiffs’ motion for
 13 class certification and, even if the Court certified the class, there is a risk the Court could later de-
 14 certify it. This factor therefore favors settlement.

15 **4. Amount Offered in Settlement**

16 This factor is considered “the most important variable in assessing a class settlement.” *In*
 17 *re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1001 (N.D. Cal. 2015). Here, it
 18 favors settlement because Class Members will be adequately and fairly compensated by
 19 Volkswagen in a number of ways.

20 For Generation One Eligible Owners, the Settlement provides for a Buyback or Trade-In,
 21 plus Owner Restitution, or a combination of a Reduced Emissions Modification and Owner
 22 Restitution. (Dkt. No. 2894 at 25-28.) For Class Members electing the Buyback or Trade-In
 23 options, the baseline valuation for Generation One vehicles is the NADA’s Clean Trade value as
 24 of September 2015—which predates public disclosure of the scandal. (Dkt. No. 2894-1.) As
 25 noted by Edward M. Stockton, Vice President and Director of Economics Services at The Fontana
 26 Group, Inc., this valuation method “protect[s] buyback participants from the possibility of excess
 27 price depreciation that may have occurred in the post-revelation market.” (Dkt. No. 3088-1 ¶ 27.)
 28 Class Members electing the Buyback or Trade-In options will also receive Owner Restitution

1 equal to a fixed amount of \$5,155, plus a variable component of at least \$6,000. (Dkt. No. 2894-1
2 at 3-7.) This formula results in owners receiving between 119.08% and 133.08% of their vehicles’
3 retail value as of September 2015. (Stockton Decl., Dkt. No. 3088-1 ¶ 40.) As for Eligible
4 Lessees of Generation One vehicles, the Settlement allows them to terminate their leases with no
5 penalty and receive Lessee Restitution, which is equal to approximately one-half of the payments
6 to Eligible Owners. (*See id.* ¶ 51.) This difference is reasonable given the economic differences
7 between lessees and purchasers. *See infra* at 35-36 (addressing Class Member objections related
8 to this difference).

9 The Emissions Compliant Repair offered for the Generation Two vehicles also adequately
10 and fairly compensates Class Members. If an Emissions Compliant Repair is approved for any
11 subgroup of Generation Two vehicles, Eligible Owners and Lessees of vehicles in that subgroup
12 are entitled to that repair—meaning that those Class Members will obtain a vehicle that functions
13 at or very near originally advertised emissions and performance levels. (Dkt. No. 2894 ¶¶ 6.1, 7.5;
14 *see also* FTC Statement in Support, Dkt. No. 2845 at 3 (“Simply put, these consumers will have
15 the car they thought they purchased—in terms of emissions, fuel economy, torque, and
16 horsepower” (emphasis omitted)).) Generation Two vehicle owners will also receive an
17 Owner Repair Payment equal to 10% of the vehicle’s September 2015 NADA Clean Retail value,
18 adjusted for options, plus a fixed amount of \$3,596.74. (Dkt. No. 2894-1 at 16.). As Mr. Stockton
19 notes, this formula results in an average Owner Repair Payment of \$8,624, which is equal to
20 approximately 13.5% of the original Manufacturer’s Suggested Retail Price (MSRP), and likely
21 exceeds the “TDI premium” that Class Members paid to purchase a vehicle with clean diesel
22 technology. (Dkt. No. 2088-1 ¶ 58.) The Settlement also provides Decision Dates by which
23 Volkswagen must obtain regulatory approval of the Emissions Compliant Repair for each group of
24 Generation Two vehicles. (Dkt. No. 2894 ¶ 6.2.) If no Emissions Compliant Repair is timely
25 approved, then Eligible Owners and Eligible Lessees of Generation Two vehicles will have similar
26 remedies as those available to their Generation One counterparts. (*Id.* ¶ 6.7.)

27 As the above reflects, the Settlement provides a wealth of benefits for both Generation One
28 and Generation Two owners and lessees. Also of importance, given that courts should consider a

1 settlement as a “complete package taken as a whole,” *Officers for Justice v. Civil Serv. Com’n of*
 2 *City and Cnty. of S.F.*, 688 F.2d 615, 628 (9th Cir. 1982), is Plaintiffs’ recovery under the Bosch
 3 Settlement, which addresses the same consumer harm and was also secured by Class Counsel.
 4 (*See* Amended Compl. ¶¶ 237-300 (alleging that Bosch worked closely with Volkswagen to
 5 develop and supply the defeat device for use in Volkswagen’s vehicles); FTC Response, Dkt. No.
 6 3184 at 2-3 (“Although consumers have distinct legal claims against Volkswagen and Bosch, they
 7 did not suffer distinct injuries.”).) Under the Bosch Settlement, each owner of an Eligible Vehicle
 8 in the 3.0-liter Settlement will receive an additional \$1,500, and each lessee of an Eligible Vehicle
 9 in the 3.0-liter Settlement will receive an additional \$1,200. (Dkt. No. 2838 at 15.) When the
 10 benefits under the Bosch and 3.0-liter settlements are combined, Class Members will be made
 11 whole for the harm they suffered from the defeat device scandal. (*See* FTC Response, Dkt. No.
 12 3184 at 2.) The amount offered in the Settlement favors approval.

13 5. Extent of Discovery Completed and the Stage of the Proceedings

14 “In the context of class action settlements, formal discovery is not a necessary ticket to the
 15 bargaining table where the parties have sufficient information to make an informed decision about
 16 settlement.” *In re Mego*, 213 F.3d at 459 (brackets and internal quotation marks omitted).
 17 Instead, courts look for indications that “the parties carefully investigated the claims before
 18 reaching a resolution.” *Ontiveros*, 303 F.R.D. at 371.

19 The extent of discovery completed and the stage of the proceedings weighs in favor of
 20 approving the Settlement. The parties reached this Settlement at an early phase of the litigation—
 21 avoiding any dispositive motion practice and submitting the Settlement for preliminary approval a
 22 little less than a year after filing the Consolidated Consumer Class Action Complaint. (*See* Dkt.
 23 Nos. 1230, 1698.) But a swift resolution does not mean the parties were unprepared to engage in
 24 settlement negotiations. To the contrary, Class Counsel and Volkswagen engaged in significant
 25 discovery such that each party was fully informed when participating in settlement discussions.

26 Prior to filing the Complaint, “Class Counsel served Volkswagen with extensive written
 27 discovery requests, including interrogatories, requests for production, and requests for
 28 admissions[.]” (Dkt. No. 1784 at 15.) In response, Volkswagen produced over 12 million pages

1 of documents, and Class Counsel reviewed and analyzed approximately 70% of them. (*Id.*)
 2 Additionally, Class Counsel “analyz[ed] economic damages (and retain[ed] experts concerning
 3 those issues); review[ed] Volkswagen’s financial condition and ability to pay any settlement or
 4 judgment; assess[ed] technical and engineering issues; . . . and research[ed] environmental issues,
 5 among others.” (*Id.* at 14.) Volkswagen also propounded discovery requests on Class Counsel,
 6 who in turn “produc[ed] documents from 174 named Plaintiffs, 24 of whom were named as
 7 representatives of the 3.0-liter TDI vehicle Settlement Class, in addition to compiling information
 8 to complete comprehensive fact sheets, which also included document requests, for
 9 each named Plaintiff.” (Dkt. No. 3088 at 18.)

10 Class Counsel’s careful investigation of their claims before they filed their Complaint, and
 11 their extensive review of discovery materials, indicates they had sufficient information to make an
 12 informed decision about the Settlement. Accordingly, this factor favors approving the Settlement.

13 **6. Experience and Views of Counsel**

14 “Parties represented by competent counsel are better positioned than courts to produce a
 15 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enters. Sec.*
 16 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Courts afford “great weight . . . to the recommendation of
 17 counsel, who are most closely acquainted with the facts of the underlying litigation.” *Nat’l Rural*
 18 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (internal quotation
 19 marks omitted).

20 Class Counsel believe it is “highly uncertain whether the Class would be able to obtain and
 21 sustain a better outcome through continued litigation, trial, and appeal.” (Dkt. No. 3088 at 30.)
 22 As the Court has previously noted, Class Counsel “are qualified attorneys with extensive
 23 experience in consumer class action litigation and other complex cases” who the Court selected
 24 after a competitive application process. (Dkt. No. 2919 at 23.) In light of Class Counsel’s
 25 considerable experience and their belief that the Settlement provides more than adequate benefits
 26 to Class Members, this factor favors final approval.

27 **7. Presence of Government Participant**

28 Although no government entity is a direct party to the Settlement, Class Counsel

1 negotiated the Settlement alongside the United States, FTC, and CARB. For over three months
2 after this Court approved the 2.0-liter settlement, the parties and the government entities held a
3 series of meetings and communicated “on a continuous basis” until reaching agreement. (*See* Dkt.
4 No. 3089 ¶ 4.) As a result, the agreements—the 3.0-liter Settlement, the United States’ Second
5 Partial Consent Decree, and the FTC’s Consent Order—are inextricably tied to one another.
6 Indeed, the Settlement Master explains that “[t]his settlement process was iterative and had
7 multiple moving parts and shifting dynamics because it had to address the needs and interests of
8 consumers and state and federal government entities.” (*Id.* ¶ 7.) The FTC also “strongly
9 supports” the Settlement, as it is not only in the public interest, but also “contains the same
10 financial provisions as the proposed FTC Order.” (Dkt. No. 3184 at 1.) The Court concludes that
11 this factor strongly favors settlement.

12 **8. Reactions of Class Members**

13 There are approximately 88,500 3.0-liter Class Members. (Dkt. No. 3190 at 5.) Their
14 interest in the Settlement has been high, as evidenced by the fact that, since the announcement of
15 the Settlement, Class Counsel and staff have had approximately 3,000 communications with 3.0-
16 liter Class Members by phone, email, and correspondence; the 3.0-liter Settlement Website has
17 received over 260,000 unique visits since its launch; and more than 87,000 eligible VINs (over
18 98% of the Class) have already been looked up on the Settlement Website. (Dkt. No. 3190 at 6.)
19 In fact, as of April 28, 2017, 60,788 Class Members (68.7% of the Class) had already registered
20 for benefits under the Settlement, two years before the deadline to do so. (*Id.*)

21 In contrast, only 593 Class Members (0.67%) have opted out of the Settlement.³
22 Moreover, only 32 Class Members—approximately 0.036% of the Class—objected to any aspect
23 of the Settlement. These opt-out and objection percentages are even lower than those for the 2.0-
24 liter settlement, where approximately 0.7% of the class opted out and approximately 0.09%
25 objected. (*See* Dkt. No. 2102 at 26.) A list of Class Members who have opted out of the
26 Settlement can be found in Exhibit 1 to this Order.

27
28 ³ Some Class Members opted out on behalf of multiple vehicles, resulting in a total of 612 unique
VIN opt outs. (*See* Dkt. No. 3190 at 6 n.4.)

1 Given the low opt-out and objection rates, this factor strongly favors final approval. *See*
2 *Churchill*, 361 F.3d at 577 (finding no abuse of discretion where district court, among other
3 things, reviewed list of 500 opt outs in a class of 90,000 class members); *Cruz v. Sky Chefs, Inc.*,
4 No. C-12-02705 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (“A court may
5 appropriately infer that a class action settlement is fair, adequate, and reasonable when few class
6 members object to it.”); *Chun-Hoon*, 716 F. Supp. 2d at 852 (granting final approval of settlement
7 where 16 out of 329 class members (4.86%) requested exclusion).

8 That more than half of Class Members have filed a claim also supports final approval. *See*
9 *In re TracFone*, 112 F. Supp. 3d at 1006 (approving class settlement with claim rate of
10 approximately 25-30%); *Moore v. Verizon Commc’ns Inc.*, No. C 09-1823 SBA, 2013 WL
11 4610764, at *8 (N.D. Cal. Aug. 28, 2013) (approving class settlement with 3% claim rate). While
12 the claim rate here is remarkable in and of itself, it is particularly impressive given that the Claim
13 Submission Deadline for Eligible Owners and Eligible Lessees of Generation One vehicles is June
14 1, 2019, and the Claim Submission Deadline for Eligible Owners and Eligible Lessees of
15 Generation Two vehicles is December 31, 2019. (Dkt. No. 2894 ¶ 2.17.) Nonetheless, the Court
16 recognizes that not all—albeit a small percentage—of Class Members are not entirely satisfied
17 with the Settlement. “[I]t is the nature of a settlement, as a highly negotiated compromise . . . that
18 it may be unavoidable that some class members will always be happier with a given result than
19 others.” *Allen*, 787 F.3d at 1223 (internal quotation marks omitted). The Court addressed one of
20 those objections above in its discussion of the Notice Program; it addresses the remainder here.

21 **a. Lack of an Immediate Buyback Option for Generation Two Vehicles**

22 The most common objection was made by Generation Two vehicles owners who want an
23 immediate buyback option for their vehicles. They note that Generation One owners and
24 consumers in the 2.0-liter settlement received a buyback option. And they doubt that Volkswagen
25 will be able to develop an Emissions Compliant Repair.

26 The lack of an immediate buyback option for Generation Two vehicle owners is reasonable
27 under the circumstances. Generation Two 3.0-liter vehicles are uniquely situated among the
28 affected “clean diesel” vehicles. These vehicles can be brought into compliance with the emission

1 standards for which they were originally certified, without affecting performance. (*See* Dkt. No.
2 3083 at 15-18.) Thus, if Volkswagen obtains timely approval for an Emissions Compliant Repair,
3 owners of Generation Two vehicles will receive the vehicle they originally thought they were
4 buying. (*See* FTC Statement in Support (stating that Generation Two consumers “will have the
5 car they thought they purchased—in terms of emissions, fuel economy, torque, and horsepower”)
6 (emphasis omitted).)

7 Given that these vehicles likely can be fixed, offering an immediate buyback option would
8 actually be counterproductive to the environmental goals of this litigation. A buyback would
9 unnecessarily “waste assets that have already been committed to creating, manufacturing, selling,
10 and buying a vehicle.” (Dkt. No. 2917, Hr’g Tr. at 64:10-14.) The United States agrees, noting
11 that “there are significant environmental benefits that come from returning the vehicles to their
12 original certified exhaust emission standard and avoiding the potential scrapping of tens of
13 thousands of vehicles.” (Dkt. No. 3083 at 22.)

14 The potential availability of an Emissions Compliant Repair later this year, or even in early
15 2018 (*see* Dkt. No. 2894 ¶¶ 6.2-.3), understandably may frustrate some Generation Two vehicle
16 owners, who in the meantime might continue driving a car that does not live up to the
17 environmental standards they expected. The Settlement takes this into account, however, as
18 Generation Two owners will receive a restitution payment ranging from \$7,039 to \$16,114 (Dkt.
19 No. 3088 at 14), up to half of which will be available shortly after final approval of the Settlement
20 (Dkt. No. 2894-3 at 3). As the FTC notes, this restitution payment is intended to compensate
21 consumers for, among other things, “the lost opportunity to drive an environmentally-friendly
22 vehicle, and the additional amount consumers paid for a feature (clean emissions) that did not
23 exist.” (Dkt. No. 3184-1 ¶ 7.) Thus, “no buyback is necessary for Generation 2 because
24 consumers who participate in the settlement will be made whole.” (FTC Response, Dkt. No. 3184
25 at 4.) And if an Emissions Compliant Repair is not approved for any group of Generation Two
26 vehicles, as some Class Members fear, owners of those vehicles will have the option to sell them
27 back to Volkswagen under the same terms available to owners of Generation One vehicles. (*See*
28 Dkt. No. 2984 ¶¶ 6.2-6.3.) The Court overrules this objection.

b. Reduced Performance for Generation Two Vehicles

○ Objection to Any Reduced Performance

As noted above, Volkswagen represents that the Emissions Compliant Repair for Generation Two vehicles “shall not result in ‘Reduced Performance.’” (Dkt. No. 2894 ¶ 7.5.) The Settlement defines Reduced Performance as “(1) a reduction in calculated fuel economy using the EPA formula of more than 3 MPG; (2) a decrease of greater than 5% in peak horsepower; or (3) a decrease of greater than 5% in peak torque.” (*Id.*) Some objectors contend that Volkswagen could comply with the terms of the Settlement, not trigger the Reduced Performance provision, but that their vehicles will still have diminished performance. In other words, they contend that the allowable variations in performance are too high.

The FTC has approved the Reduced Performance ranges. It contends that within the band of acceptable diminished performance “consumers will have the car they thought they purchased—in term of emissions, fuel economy, torque, and horsepower.” (Dkt. No. 2845 at 3 (emphasis omitted).) Further, some minor reductions in performance are taken into account, and remedied, through the Settlement’s restitution payments. The FTC notes that “Volkswagen likely can repair Generation 2 vehicles without affecting their performance,” but that “to ensure consumers are fully compensated, the FTC included performance effects and diminished value when determining compensation amounts, even though those effects are unlikely.” (Dkt. No. 3184 at 4, Ex. A. ¶ 8.) Because the Reduced Performance metrics are reasonable and are supported by the FTC, the Court overrules the objection.

○ Measuring Reduced Performance

Other objectors contend that the Settlement gives Volkswagen the sole right to determine whether an Emissions Compliant Repair alters performance, and that Volkswagen should not be trusted to make such a determination. The Settlement, however, does not give Volkswagen this authority. Rather, it provides that any Emissions Modification Proposal must ultimately be approved by EPA and CARB. (*See* Dkt. No. 2894 ¶ 7.5.) To that end, the DOJ’s Second Partial Consent Decree includes detailed requirements for Volkswagen’s submission of an Emissions Modification Proposal to EPA and CARB, and includes precise testing standards and metrics that

1 Volkswagen must achieve in order to receive approval. (*See* Dkt. No. 2520-1 at 125-134.) Given
2 these detailed requirements, as well as the history of this case and the defeat device scandal, the
3 Court is confident that those agencies will review an Emissions Modification Proposal carefully.

4 ○ Recourse if there is Reduced Performance

5 A number of objectors contend that they will be insufficiently compensated if Volkswagen
6 ultimately develops an Emissions Compliant Repair that causes Reduced Performance. Noting
7 that Volkswagen has agreed to make an additional payment of \$500 for each affected Eligible
8 Vehicle in such a scenario, Objector Koller, for example, contends that this amount is insufficient
9 given that she paid nearly \$90,000 for a high performance vehicle. (*See* Dkt. No. 3190-2 at 13.)

10 The Court overrules this objection for the following reasons. First, such a scenario is not
11 anticipated. As the FTC states, “Volkswagen likely can repair Generation 2 vehicles without
12 affecting their performance,” as “these are the newest cars with the largest engines.” (Dkt. No.
13 3184 at 4.) Volkswagen also represents in the Settlement Agreement “that the Emissions
14 Compliant Repair *shall not* result in ‘Reduced Performance.’” (Dkt. No. 2894 ¶ 7.5 (emphasis
15 added).) Although the Settlement also includes contingencies for an Emissions Compliant Repair
16 that does cause Reduced Performance, the most reasonable interpretation of this provision is that
17 Reduced Performance is seen by the parties as unlikely. Second, focusing only on the \$500
18 payment misses that this payment is in addition to restitution payments ranging from \$7,039 to
19 \$16,114 for Generation Two vehicle owners. (Dkt. No. 3088 at 14.) In the event that an
20 Emissions Compliant Repair causes Reduced Performance, some of this compensation can offset
21 any reductions in vehicle value. Finally, the \$500 payment is not the only remedy available to
22 affected Class Members. Rather, in the event that an Emissions Compliant Repair causes “a
23 substantial, material adverse degradation above and beyond the Reduced Performance levels
24 specified,” “Plaintiffs reserve their right to seek, and [Volkswagen] reserves its right to oppose,
25 additional remedies through motion to the Court.” (*Id.*) The Court expects Class Counsel to fully
26 and vigorously protect Class Members’ rights—as they have throughout this litigation—should
27 Generation Two vehicles experience such a reduction in performance.

1 o Reduced Performance Metrics

2 Objector Schmeltzer contends that the Reduced Performance metrics fail to account
3 for potential reductions in vehicle acceleration. The Porsche Cayenne Press Information
4 he quotes in his objection, however, supports that acceleration derives directly from
5 horsepower and torque—two components expressly covered by the Reduced Performance
6 definition. (*See* Dkt. No. 2894 ¶ 7.5.) The Press Information provides that “The Cayenne
7 Diesel is a powerful and efficient long-distance runner. The 3.0-liter V6 delivers 245 hp
8 and, more importantly, 406 lb-ft. of torque, *ensuring strong acceleration* and excellent
9 pulling power.” (emphasis added). Thus, because the definition of Reduced Performance
10 implicitly tracks decreases in acceleration, the Court overrules this objection.

11 **c. Decision Date Extensions for an Emissions Compliant Repair**

12 If Volkswagen does not develop, and EPA and CARB do not approve, an Emissions
13 Compliant Repair by the Decision Date for each Sub-Generation of Generation Two vehicles, and
14 Volkswagen cannot demonstrate good cause for the delay, it can purchase an extension of up to 90
15 additional days by paying each affected Class Member \$500 for each 30-day extension. (Dkt. No.
16 2894 ¶ 6.4.) One objector complains that these potential extensions are inappropriate because his
17 vehicle continues to depreciate “at approximately \$500 per month.”

18 All cars depreciate over time, and the Settlement is not designed or intended to compensate
19 Class Members for losses that are unrelated to the conduct at issue in this case. But even
20 assuming that some of the Eligible Vehicles depreciate at this rate, and that the depreciation is
21 attributable solely to Volkswagen’s conduct, the extension payments would provide sufficient
22 compensation to mitigate the lost value. In short, the \$500 extension payments appropriately
23 addresses any lost value associated with the delay. The Court overrules this objection.

24 **d. Compensation for Owners of Older Vehicles**

25 One Class Member objects to the fact that owners of older Eligible Vehicles receive less
26 Owner Restitution under the Settlement than owners of newer Eligible Vehicles. This Class
27 Member contends that the longer a Class Member owned an Eligible Vehicle, the more he or she
28 was deceived and thus harmed by Volkswagen’s conduct.

1 Even if owners of older Eligible Vehicles suffered more emotional distress from the
2 emissions scandal than owners of newer Eligible Vehicles, which is not certain, the difference in
3 compensation for older and newer vehicles reasonably reflects certain economic considerations.
4 For Generation One vehicles, the difference in compensation reflects that a vehicle's value
5 depreciates significantly with use. (*See* Stockton Decl., Dkt. No. 3088-1 ¶ 25 (“In short, motor
6 vehicles are depreciating assets that lose value over time.”).) Thus, all other things being equal,
7 the owner of a newer vehicle has a more valuable asset than the owner of an older vehicle of the
8 same make and model, and should receive more compensation in the Buyback.

9 For Generation Two vehicles, since Eligible Owners will retain their vehicles, Owner
10 Restitution seeks to compensate them for the loss in vehicle value experienced when
11 Volkswagen's emissions-cheating was exposed. Mr. Stockton estimates that up to 10% of vehicle
12 value may have been attributable to the TDI technology (the “TDI premium”). (Dkt. No. 2088-1
13 ¶ 30.) As Generation Two vehicles age and become less valuable, however, it takes less money to
14 compensate for this 10% reduction in value, which makes the higher Owner Restitution payments
15 to Eligible Owners of newer vehicles reasonable. In fact, the Settlement tends to provide more
16 value to owners of older vehicles than the law ordinarily would require, as the Settlement's vehicle
17 valuations (for purposes of both the Buyback and Owner Restitution) are frozen in time and do not
18 decrease to account for up to three years of depreciation between September 2015 and the ultimate
19 Buyback or restitution payment date. (*See* Stockton Decl., Dkt. No. 3088-1 ¶ 27 (“[T]he frozen
20 values allow[] owners who chose to do so to continue to use their vehicles until the buyback date
21 without the vehicle's value experiencing age-related depreciation that normally occurs in the retail
22 vehicle market.”) Accordingly, the Settlement fairly compensates consumers based on the age and
23 use of their vehicles.

24 e. Mileage Adjustments

25 Three Class Members object to the use of a mileage adjustment in valuing their vehicles.
26 As an initial matter, all three objectors appear to be owners of Generation Two vehicles. If an
27 Emissions Compliant Repair is timely approved, these Class Members will receive Repair
28 Participation Payments, which are not adjusted for mileage. (*See* Dkt. No. 2894-3 at 23 n.4.) In

1 any event, the use of mileage adjustments for the Generation One Buyback, or a Generation Two
2 Buyback in a scenario where an Emissions Compliant Repair is not approved, is reasonable. Class
3 Members who frequently drove their vehicles undeniably got more use out of them, and, quite
4 simply, mileage affects a vehicle's value. A vehicle with high mileage is worth less than a vehicle
5 with low mileage.

6 Related to the discussion of depreciation above, this notion is reflected in federal and state
7 laws that allow a reduction in a consumer's recovery based on his or her use of the vehicle. *See*,
8 *e.g.*, 15 U.S.C. § 2301(12) (defining the term "refund" for purposes of the Magnuson Moss
9 Warranty Act as "refunding the actual purchase price (less reasonable depreciation based on actual
10 use where permitted by rules of the Commission)"); 49 U.S.C. § 30120(a)(A)(iii) (following a
11 safety recall under the National Traffic and Motor Vehicle Safety Act, an available remedy to
12 consumers is to "refund[] the purchase price, less a reasonable allowance for depreciation"); Cal.
13 Civ. Code § 1793.2(d)(2)(C) (providing a damages offset under California's Song-Beverly
14 Consumer Warranty Act for mileage driven). The Settlement is consistent with this practice.
15 Moreover, the negotiated 15,000 miles per year allowance for each vehicle is consistent with, if
16 not more generous than, the industry average. As Professor Klonoff explained in a declaration
17 submitted in support of the 2.0-liter settlement, and which is equally applicable here, "[m]ost
18 [valuation] calculations offered by Carmax, Kelley Blue Book, Edmunds, and others are based on
19 11,500 to 13,000 annual miles." (Dkt. No. 1976-1 ¶ 46.) Because the Settlement's mileage
20 allowances are reasonable, the Court overrules these objections.

21 **f. Compensation for Maintenance Costs**

22 Some objectors contend that the Settlement is unfair because it does not provide additional
23 compensation for already incurred maintenance and repair costs. For example, Objector Rulon
24 discusses the costs associated with an AdBlue system malfunction and "unrelated repairs;"
25 Objector Rinaldo provides invoices for oil changes and the replacement of windshield-wiper
26 blades and brake pads; and Objector McKinney identifies costs he incurred as a result of an engine
27 replacement at approximately 85,000 miles.

28

1 The Settlement resolves claims arising from Volkswagen’s use of a defeat device to
2 manipulate emissions testing for certain pollutants. None of these objectors plausibly allege that
3 the maintenance or repair costs they incurred were attributable to the conduct at issue, or even that
4 the costs were related to their vehicles’ exhaust or emissions systems. Additionally, even if the
5 repairs were shown to be attributable to Volkswagen’s defeat device, a settlement that attempted
6 to compensate consumers on an individual basis for their repair bills would require so many
7 individualized assessments that the cost and difficulty of administering it would necessarily result
8 in fewer benefits than the proposed Class-wide Settlement. As Professor Robert H. Klonoff noted
9 when addressing similar objections in the context of the 2.0-liter settlement, the individualized
10 determinations that would be required would create impracticable administrative issues. (Dkt. No.
11 1976-1 ¶ 75.)

12 Objector McKinney also contends that the value of his 2010 Volkswagen Touareg
13 increased when he replaced its engine, and that the Settlement does not adequately compensate
14 him for this increase in value. The Generation One Buyback compensation package, however,
15 provides Class Members with a minimum of 119.08% of the September 2015 retail value of their
16 vehicles. (Stockton Decl., Dkt. No. 3088-1 ¶ 40.) If Objector McKinney participates in the
17 Buyback, he will therefore receive compensation above his vehicle’s retail value in September
18 2015. Moreover, the Settlement does not require him to sell his vehicle. Assuming that a
19 Reduced Emissions Modification becomes available, he can have the repair done, receive
20 compensation, and keep his vehicle for later resale, or until the end of its operational life. And if
21 no modification ultimately becomes available for his vehicle, he can withdraw from the Settlement
22 between August 1 and September 1, 2018. (Dkt. No. 2894 ¶ 9.2.)

23 For the foregoing reasons, the Court overrules the objections seeking additional
24 compensation for past repair and maintenance costs.

25 **g. Compensation for Eligible Former Owners**

26 One Class Member objects to the fact that Owner Restitution is less for Former Owners
27 than for current Eligible Owners. Eligible Former Owners will be awarded half the applicable
28 Owner Restitution as Eligible Owners under the Settlement, unless two Eligible Former Owners

1 make a claim, in which case each will receive a restitution payment of approximately one quarter
2 of the applicable Owner Restitution. (Dkt. No. 2894-3 at 16.) The Court concludes that this
3 formula fairly and adequately compensates Eligible Former Owners. If a Class Member has
4 already sold his or her vehicle to a third party, he or she has already received some compensation
5 for that Eligible Vehicle. But because a post-September 2015 sale price would reflect a reduction
6 in value caused by Volkswagen's disclosure, Former Owner Restitution accounts for the
7 difference between the pre- and post-disclosure values. This is a fair and reasonable result, and
8 the Court therefore overrules the objection.

9 **h. Compensation for Lessees**

10 Objector Dasmalchi leased a Generation Two vehicle and raises three objections with
11 respect to the Settlement's compensation for, and classification of, Eligible Lessees.

12 Mr. Dasmalchi first objects to the amount of the Lessee Repair Payment, asserting it
13 should not be lower than the amount of the Owner Repair Payment. Class Members in the 2.0-
14 liter settlement raised a similar objection, which the Court addressed in its order granting Class
15 Counsel's motion for final approval:

16 Although Lessee Restitution is less than Owner Restitution, as discussed above,
17 this reflects the fact that owners and lessees have different economic relationships
18 with their vehicles. Owners, for instance, must bear the diminution in value caused
19 by Volkswagen's disclosure of the defeat device, but Lessees can simply return the
20 vehicle to the lessor without bearing the brunt of the loss. . . .

21 (Dkt. No. 2102 at 35 (citations omitted).) The same reasoning applies here. The 3.0-liter
22 Settlement's reduced compensation for Eligible Lessees is reasonable given the different
23 economic relationships owners and lessees have with their vehicles.

24 Second, Mr. Dasmalchi contends that, although he is a lessee, he intended to purchase his
25 vehicle at the end of his lease for a previously specified residual value, i.e., an option value. That
26 option value, he asserts, is no longer reflective of the vehicle's market value due to the emissions
27 fraud, and he contends that he and other lessees who intended to purchase their vehicles should be
28 compensated for this difference. In fact, Eligible Lessees will be compensated for the reduced
option value. As the FTC noted during the Fairness Hearing, reduced option value was considered

1 when determining the amount of the Lessee Repair Payment. (Dkt. No. 3212, Hr'g Tr. at 79:14-
2 17.)

3 Finally, Mr. Dasmalchi objects that lessees who purchased their vehicles on or before
4 January 31, 2017 are classified as Eligible Owners, while lessees who purchased their vehicles
5 after January 31, 2017 are classified as Eligible Lessees. January 31 is a reasonable demarcation
6 date, however, as Class Counsel filed their motion for preliminary approval of the 3.0-liter
7 Settlement on that date. (Dkt. No. 2840.) Lessees who purchased their vehicles after January 31
8 therefore did so with knowledge of the benefits they could expect to receive under the Settlement,
9 if approved. Lessees who purchased their vehicles on or before January 31, in contrast, assumed
10 the burdens of ownership without this information, and therefore are reasonably treated as Eligible
11 Owners under the Settlement.

12 **i. Extended Warranties and Service Contracts**

13 Several Class Members raise objections regarding warranties and service contracts. First,
14 one Class Member notes that his factory warranty is set to expire while he waits for an Emissions
15 Compliant Repair to be approved or denied, and argues that he should be compensated with an
16 extended warranty. In fact, he will be. The Settlement provides Generation Two owners and
17 lessees with a Bridge Warranty that extends the terms of their vehicles' New Vehicle Limited
18 Warranty and Powertrain Limited Warranty until EPA and CARB approve or deny a proposed
19 Emissions Compliant Repair. (*See* Dkt. No. 2894 ¶ 7.2.)

20 Several Generation Two vehicle owners also object that the Settlement does not provide
21 them with additional compensation for certain extended vehicle warranties and service contracts
22 that they purchased with their vehicles. If an Emissions Compliant Repair is timely approved,
23 however, these Class Members can continue driving their vehicles and take advantage of their
24 extended warranties and service contracts. If an Emissions Compliant Repair is not timely
25 approved, these Class Members may participate in the Buyback or Trade-In options, pursuant to
26 which the Settlement requires Volkswagen to refund any unused portion of these plans if
27 purchased from an authorized dealer. (*See id.* ¶ 7.4.) Thus, Class Members will be reasonably
28

1 compensated for previously purchased extended warranties and service contracts. The Court
2 therefore overrules these objections.

3 **j. Dealer Incentives**

4 One Generation One vehicle owner contends that, in addition to the current Buyback
5 terms, Audi should be required to offer Generation One vehicle owners an additional incentive of
6 15% off the MSRP for a new replacement vehicle if purchased through an authorized Audi
7 dealership.

8 Because “the very essence of a settlement is compromise,” *Officers for Justice*, 688 F.2d at
9 624, the Settlement may leave some Class Members without the exact remedies they would prefer.
10 That the Settlement does not require dealerships to offer additional incentives to Eligible Owners,
11 however, does not make the Settlement unfair, unreasonable, or inadequate. To the contrary, for
12 Generation One vehicles, average Buyback payments are equal to a minimum of 119.08% of
13 vehicle retail value as of September 2015. (Dkt. No. 3088-1 ¶ 40.) As noted above, the use of
14 September 2015 values avoids the reduction in market value caused by the alleged emissions
15 fraud, and also “function[s] as direct compensation for items such as initial overpayment, excess
16 ownership costs, excess shoe leather [in shopping for a new vehicle], and other incremental costs
17 of ownership and replacement.” (*Id.* ¶ 41.) The Settlement’s buyback formulas are more than
18 adequate to compensate Generation One vehicle owners, and thus the Court overrules the
19 objection.

20 **k. Third-Party Leases**

21 One lessee of a Generation Two vehicle objects that she has been improperly excluded
22 from the Class on account of the fact that her lease is with US Bank, instead of with VW Credit,
23 Inc., Audi Financial Services, or Porsche Financial Services, Inc. The Settlement’s exclusion of
24 lessees who lease their vehicles from non-captive finance and leasing companies is reasonable.
25 (*See* Dkt. No. 2894-3 at 9.) As Professor Klonoff notes, “the parties to the settlement cannot
26 interfere with third-party contracts, and thus cannot offer . . . a lease termination remedy” to those
27 who have contracted with third parties. (Dkt. No. 3190-2 ¶ 15 n.8.) Lessees who do not qualify
28

1 for the Class lose nothing if the Settlement is approved, however. Their claims are preserved if
2 they wish to pursue them.

3 **I. Punitive Damages**

4 One objector argues that, in addition to the remedies provided, the Settlement should
5 include “punitive compensation.” This is essentially an objection to the size of the Settlement, but
6 the objector does not adequately take into that the Settlement provides Class Members with
7 meaningful and certain relief while avoiding the risks and delays involved in proceeding to trial.
8 *See In re High-Tech Employee Antitrust Litig.*, 2015 WL 5159441 at *4 (noting that an objector
9 who sought punitive damages did not “adequately take into account the risks and delays involved
10 in proceeding to trial,” and “ignore[d] that the Settlement provides the Class with a timely, certain,
11 and meaningful cash recovery”). Further, “[g]iven that any award of punitive damages is
12 inherently speculative and discretionary, courts regularly approve settlements that offer no or little
13 compensation representing the risk of a punitive damages award.” *In re Oil Spill by Oil Rig*
14 *Deepwater Horizon*, 295 F.R.D. 112, 155 (E.D. La. 2013).

15 It is also worth noting that the Settlement is no mere slap on the wrist. Volkswagen agreed
16 to pay up to \$10.033 billion to consumers in the 2.0-liter settlement, and between \$1.2 billion and
17 over \$4 billion in the 3.0-liter Settlement. Volkswagen will also pay \$2.9 billion to support
18 environmental remediation programs and \$2 billion to promote zero-emissions technology as part
19 of the DOJ’s Consent Decrees. (*See* Dkt. Nos. 2103 at 4; 2520-1 at 163.) And in addition to
20 consumer and environmental payments, substantial criminal penalties have been imposed against
21 Volkswagen in proceedings addressing the defeat device scheme in the Eastern District of
22 Michigan. Specifically, on January 11, 2017, Volkswagen pled guilty to criminal charges and will
23 pay an additional \$4.3 billion in criminal and civil penalties and be placed on probation. Six
24 Volkswagen executives have also been indicted for their roles in the defeat device scandal. *See*
25 *United States v. Volkswagen AG*, No. 16-cr-20394-SFC (E.D. Mich. 2017).⁴

26 The Settlement offers fair compensation to Class Members, and together with the 2.0-liter
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28 ⁴ *See also* U.S. Department of Justice, *Justice News*, <https://www.justice.gov/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six> (Jan. 11, 2017).

1 settlement, and the civil and criminal agreements with state and federal government agencies,
 2 serves to adequately punish Volkswagen for its now exposed and admitted conduct. The lack of
 3 further punishment does not warrant a denial of final approval of the Settlement.

4 **m. Opt-Out Deadline**

5 Finally, certain objectors assert that the opt-out deadline did not provide them with enough
 6 time to make an informed decision about the Settlement. These objectors contend that the opt-out
 7 deadline should not have pre-dated the fairness hearing or the Decision Dates for the Emissions
 8 Compliant Repairs.

9 The opt-out deadline, on April 14, 2017, was nearly two months after the Class Notice
 10 Program began (*see* Dkt. No. 3190-4 ¶¶ 8, 13)—ample time for potential Class Members to decide
 11 whether to participate in the Settlement or opt out. *See Torrissi v. Tucson Elec. Power Co.*, 8 F.3d
 12 1370, 1375 (9th Cir. 1993) (finding a 31-day opt-out period adequate and citing with approval opt-
 13 out periods of 26 and 38 days). It was also necessary for the opt-out deadline to occur prior to the
 14 May 11, 2017 fairness hearing and the Decision Dates for the Emissions Compliant Repair, so that
 15 the Court and the parties would have time to effectuate and implement the Settlement.

16 Nonetheless, the Settlement also provides that if, by August 1, 2018, an Emissions Compliant
 17 Repair is not available for a given Sub-Generation of Generation Two vehicles, or a Reduced
 18 Emissions Modification is not available for Generation One vehicles, affected Class Members will
 19 again have an opportunity to withdraw from the Settlement between August 1, 2018 and
 20 September 1, 2018. (Dkt. Nos. 2894-3 at 34; 3190 at 17 n.16.) Class Members will therefore
 21 have the opportunity to made another informed decision of whether to remain in the Class if an
 22 Emissions Compliant Repair or Reduced Emissions Modification is not available. The Court
 23 concludes that the opt-out deadline was reasonable and overrules these objections.

24 **B. The Bluetooth Factors**

25 Although the *Churchill* factors favor settlement, consideration of those factors alone is
 26 insufficient. *See In re Bluetooth*, 654 F.3d at 946. Where, as here, the parties reach a settlement
 27 prior to class certification, courts must examine the settlement with “an even higher level of
 28 scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under

1 Rule 23(e) before securing the court’s approval as fair.” *Id.* (citations omitted). “Collusion may
 2 not always be evident on the face of a settlement, and courts therefore must be particularly vigilant
 3 not only for explicit collusion, but also for more subtle signs that class counsel have allowed
 4 pursuit of their own self-interests and that of certain class members to infect the negotiations.” *Id.*
 5 at 947. Signs of subtle collusion include:

- 6 (1) when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but
 7 class counsel are amply rewarded;
- 8 (2) when the parties negotiate a “clear sailing” arrangement providing for the payment of attorneys’ fees separate and apart from
 9 class funds, which carries the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel
 10 accepting an unfair settlement on behalf of the class; and
- 11 (3) when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund.

12 *Id.* (internal quotations marks and citations omitted). The *Bluetooth* court made clear that these
 13 factors are not dispositive but merely “warning signs” or “indicia of possible implicit collusion.”
 14 *Id.* Even if all three signs are present, courts may still find that a settlement is reasonable. *See id.*
 15 at 950 (noting that the district court may find the settlement reasonable notwithstanding the
 16 presence of all three *Bluetooth* factors).

17 Despite the presence of one *Bluetooth* factor, the Court concludes that there is no evidence
 18 of collusion. The first *Bluetooth* factor asks whether Class Counsel will receive a disproportionate
 19 distribution of the Settlement or whether Class Counsel are amply rewarded while the Class
 20 receives no monetary distribution. *Id.* at 947. This factor is not implicated, as the Settlement does
 21 not entitle Class Counsel to any portion of the Settlement funds; rather, the Escrow Account is
 22 designated solely for Class Members. Further, the Settlement provides Class Members with
 23 significant monetary benefits. And even if Class Counsel were to receive the maximum they
 24 stated they would seek in attorneys’ fees, that amount— \$245 million, inclusive of costs—is
 25 approximately 20% of the cash component of the Settlement, which is below the 25% benchmark
 26 established by the Ninth Circuit. *See In re Bluetooth*, 654 F.3d at 942. Thus, there is no concern
 27 that Class Counsel will be rewarded while Class Members receive no monetary award.

28 The second *Bluetooth* factor considers whether the parties negotiated a “clear sailing”

1 agreement for the payment of attorneys’ fees separate from the class funds. *See In re Bluetooth*,
2 654 F.3d at 947. Although the Settlement provides that Volkswagen will pay attorneys’ fees
3 separate from the compensation provided to Class Members (Dkt. No. 2894 ¶ 14.1), there is no
4 evidence of a “clear sailing” agreement here, as discussions of attorneys’ fees began after the
5 substantive terms of the Settlement were settled (*see* Dkt. Nos. 2894 ¶ 14.1; 2970 at 3), suggesting
6 that Class Counsel did not accept an excessive fee in exchange for an unfair settlement or
7 otherwise allow their fees to interfere with negotiations for Class Members’ benefits.
8 Additionally, although Class Counsel has agreed not to seek more than a total of \$245 million in
9 fees and costs, Volkswagen has not agreed not to contest such a request. (*See* Dkt. No. 2970 at 3.)
10 Thus, this factor is not indicative of collusion.

11 As the Court noted previously, the third *Bluetooth* factor—which considers whether the
12 settlement provides for funds not awarded to revert to defendants, *see* 654 F.3d at 947—is
13 somewhat present here in light of the fact that any funds remaining in the Escrow Account upon
14 the conclusion of the Settlement Benefit Period shall revert to Volkswagen. (*See* Dkt. No. 2894
15 ¶¶ 13.4-13.5.) But the reversionary provision here does not cause the Court concern because: (1)
16 Volkswagen is incentivized under the Settlement to develop Emissions Compliant Repairs for
17 vehicles as opposed to simply buying back noncompliant vehicles; and (2) Volkswagen’s response
18 with respect to the 2.0-liter vehicles, as well as its efforts in effecting notice to Class Members for
19 this Settlement, evidences that it has not attempted, and will not attempt, to discourage Class
20 Member participation in an effort to maximize unclaimed funds.

21 In analyzing whether there are any indicia of collusion, the Court has also reviewed and
22 considered the declaration of the Court-appointed Settlement Master, Director Robert S. Mueller
23 III. (Dkt. No. 3089.) As Director Mueller stated, the 3.0-liter Settlement process, like the 2.0-liter
24 and Bosch settlement processes, involved “neither bad faith nor collusive behavior from anyone,”
25 but rather was “conducted at arm’s length” and involved “the frank exchange of views, spirited
26 debate, vehement disagreement, thoughtful discussion, attention to detail, and the sharing of
27 extensive data and analyses among participants.” (*Id.* ¶¶ 8-9.) The Settlement Master’s report
28

1 supports the Court’s conclusion that there was no collusion between the parties in reaching the
2 Settlement.

3 * * *

4 In light of the foregoing analysis, the Court finds final approval is appropriate. The
5 number of objections is small, and their substance does not call into doubt the Settlement’s
6 fairness. The *Churchill* factors support final approval, and the *Bluetooth* factors do not suggest
7 collusion. Accordingly, even under heightened scrutiny, the Court concludes the Settlement is
8 fair, adequate, and reasonable.

9 **DISCUSSION – CLAIMS REVIEW COMMITTEE**

10 The Settlement creates a Claims Review Committee (“CRC”) to review appeals of
11 contested claims deemed ineligible. (Dkt. No. 2894 ¶ 8.4.) The CRC is a three-member
12 committee comprised of one PSC representative, one Volkswagen representative, and one court-
13 appointed “neutral.” (*Id.*) Class Counsel and Volkswagen nominate David S. Stelling and
14 Sharon L. Nelles, respectively, to serve on the CRC. The Court now appoints the Honorable Fern
15 M. Smith (ret.) to serve as the third and neutral member.

16 **DISCUSSION – ALL WRITS ACT**

17 The All Writs Act authorizes district courts to “issue all writs necessary or appropriate in
18 aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C.
19 § 1651(a). “The power conferred by the [All Writs] Act extends, under appropriate circumstances,
20 to persons who, though not parties to the original action or engaged in wrongdoing, are in a
21 position to frustrate the implementation of a court order or the proper administration of justice, []
22 and encompasses even those who have not taken any affirmative action to hinder justice.” *United*
23 *States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977) (internal citations omitted). However, the
24 authority granted by the All Writs Act, though broad, is not unlimited. *Negrete v. Allianz Life Ins.*
25 *Co. of N. Am.*, 523 F.3d 1091, 1098 (9th Cir. 2008). Indeed, the Anti-Injunction Act limits the
26 district court’s ability to enjoin state proceedings “except as expressly authorized by Act of
27 Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.”
28 28 U.S.C. § 2283. “Although comity requires federal courts to exercise extreme caution in

1 interfering with state litigation, federal courts have the power to do so when their jurisdiction is
2 threatened.” *Hanlon*, 150 F.3d at 1025; *see Keith v. Volpe*, 118 F.3d 1386, 1390 (9th Cir. 1997)
3 (“[T]he All Writs Act, 28 U.S.C. § 1651, empowers the federal courts to enjoin state proceedings
4 that interfere, derogate, or conflict with federal judgments, orders, or settlements.”).

5 A stay of all state court actions relating to the Released Claims is necessary to preserve the
6 Court’s jurisdiction. First, Class Members have been given an opportunity to opt out of the
7 Settlement. *See Jacobs v. CSAA Inter-Ins.*, No. C 07-00362 MHP, 2009 WL 1201996, at *2 (N.D.
8 Cal. May 1, 2009) (“A district court may enjoin named and absent members who have been given
9 the opportunity to opt out of a class from prosecuting separate class actions in state court.”)
10 (citation omitted). Second, a state court’s disposition of claims similar to or overlapping the
11 Released Claims would implicate the same legal and evidentiary issues; thus, such action would
12 threaten the Court’s jurisdiction and hinder its ability to decide the case. *See id.* at *3 (“A
13 preliminary injunction is appropriate to preserve jurisdiction because there is a sufficient overlap
14 of claims between the federal and state class actions, such that the same legal and evidentiary
15 issues will be implicated in each case.”); *In re Jamster Mktg. Litig.*, No. 05-CV-0819JM(CAB),
16 2008 WL 4482307, at *6 (S.D. Cal. Sept. 29, 2008) (“Any litigant may be enjoined from
17 proceeding with a state court action where it is ‘necessary to prevent a state court from so
18 interfering with a federal court’s consideration or disposition of a case as to seriously impair the
19 federal court’s flexibility and authority to decide the case.’”) (citation omitted). Accordingly, the
20 Court enjoins Class Members who have not opted out from participating in any state court
21 litigation relating to the Released Claims. This injunction, however, does not prevent Class
22 Members from dismissing or staying his or her Released Claims.

23 CONCLUSION

24 For the foregoing reasons, the Court ORDERS as follow:

- 25 1. Plaintiffs’ motion for final approval of the Settlement is GRANTED. The
26 Settlement is fair, adequate, and reasonable and is in the best interest of Class
27 Members. Benefits under the Settlement shall immediately be made available to
28 Class Members, and Volkswagen shall pay Class Members directly the full amount

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to which they are entitled under the terms of the Settlement.

2. The Court CONFIRMS the appointment of Lead Plaintiffs’ Counsel and the PSC listed in Pretrial Order No. 7 (Dkt. No. 1084) as Settlement Class Counsel.
3. The Court CONFIRMS the appointment of the Settlement Class Representatives listed in Exhibit 1 to Plaintiffs’ motion for preliminary approval. (Dkt. No 2840-1.)
4. The Court CONFIRMS the appointment of Ankura Consulting Group, LLC as Claims Supervisor. The Claims Supervisor, including its subcontractors, and the directors, officers, employees, agents, counsel, affiliates and advisors, shall not be liable for its good-faith compliance with its duties and responsibilities as Claims Supervisor under the Settlement, this Order, all prior orders, or any further settlement-related orders or consent decrees, except upon a finding by this Court that it acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of its duties.
5. The Court APPOINTS Citibank Private Bank to serve as the Escrow Agent.
6. The Court CONFIRMS the appointment of David S. Stellings and Sharon L. Nelles to the Claims Review Committee and APPOINTS the Honorable Fern M. Smith (ret.) to serve as the CRC’s neutral member.
7. The Court DISMISSES WITH PREJUDICE the following without costs to any party:
 - a. All Released Claims as between the Settlement Class and all its Members who have not timely and properly excluded themselves, on the one hand, and any Released Party or Parties, other than as specified in this Order and in the Settlement, such as the motion for an award of attorneys’ fees and costs, as contemplated by the settling Parties in Section 14 of the Settlement, which may be filed at the appropriate time to be determined by the Court.
 - b. All claims pertaining to Eligible Vehicles, as between a Settlement Class Member who is not an opt out or otherwise excluded, and any Released

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Party or Parties, in related lawsuits pending in the MDL centralized in this Court by the Judicial Panel on Multidistrict Litigation on December 8, 2015, *see In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, 148 F. Supp. 3d 1367 (J.P.M.L. 2015).

c. All related lawsuits pending in this MDL containing only claims between a Settlement Class Member who is not an opt out or otherwise excluded, and against any Related Party or Parties, and pertaining to Eligible Vehicles.

9. Class Members who have not properly opted out and any person purportedly acting on behalf of any Class Member(s) are ENJOINED from commencing, filing, initiating, instituting, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, regulatory, arbitral or other proceeding, in any jurisdiction or forum, against any of the Released Parties. Nothing herein shall prevent any Class Member, or any person actually or purportedly acting on behalf of any Class Member(s), from taking any actions to dismiss his, her, or its Released Claims.

10. Only those persons or entities who timely submitted valid requests to opt out of the Settlement Class are not bound by this Order, and any such excluded persons or entities are not entitled to any recovery from the Settlement. A list of those persons or entities can be found in Exhibit 1 to this Order.

11. Persons and entities that are determined by the Claims Administrator or the Court to be excluded from the Class, because his/her/its vehicle is not an “Eligible Vehicle,” or for any other reason, are not bound by the Final Order and Judgment, and are not entitled to any recovery from the Settlement.

12. For Settlement Class Members who, because an Approved Emissions Modification has not become available, withdraw from the Class between August 1, 2018 and September 1, 2018, the statutes of limitations on claims asserted on behalf of those Settlement Class Members in this MDL shall be tolled from the date of the Preliminary Approval Order to the date such Settlement Class Members withdraw

United States District Court
Northern District of California

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from the Settlement Class.

13. Settlement Class Counsel shall file their application for attorneys' fees and costs by **June 30, 2017**. Any responses shall be due **July 14, 2017**, and any replies shall be due **July 21, 2017**. The Court will advise the parties if a hearing is necessary.

14. The Court retains the exclusive jurisdiction to enforce, administer, and ensure compliance with all terms of the Settlement in accordance with the Settlement and this Order.

IT IS SO ORDERED.

Dated: May 17, 2017



CHARLES R. BREYER
United States District Judge

EXHIBIT 1

LIST OF 3.0-LITER OPT-OUTS

1. Abiodun, Olufemi (TX)
2. Abreu, Jose (FL)
3. Adams, Robert (TX)
4. Adams, Janet (FL)
5. Ailstock, Conrad (FL)
6. Albano, Joseph & Georgia (CA)
7. Alberti, Ronald (FL)
8. Aldredge, Michael (TX)
9. Aldrete, Mark (CA)
10. Altamura, Ileana (FL) (multiple vehicles)
11. Althaus, Sandra J (NV)
12. Ambler, Nathaniel (VA)
13. Amirkhanyan, Armen (CA)
14. Anderson, Robert (CA)
15. Andreozzi, Anthony (FL)
16. Andres, Wade (TX)
17. Andres, Dennis (WA)
18. Angulo/Zarb, Marie/Henry (FL)
19. Antone, Herbert (HI)
20. Anwarzai, Omar (VA)
21. Applebaum, Paul (CA)
22. Arcoleo, Mathew (CA)
23. Armstrong, Lee (TX)
24. Ashton, Roger (FL)
25. Aspell, John (OR)
26. Asta, Kathleen (CO)
27. Aunapu, Kevin (VA)
28. Austin, Pauline (VA)
29. Austin, William (FL)
30. Aydlett, James & Robin (NC)
31. Bailey, David (TX)
32. Baines, Daniel (AZ)
33. Bakiev, Saidrasul (TX)
34. Bandari, Armin (CA)
35. Barbee, Jack (NC)
36. Barber, Patrick (TX) (multiple vehicles)
37. Barnes, Matthew (CA)
38. Barnette, Angela (VA)
39. Barraza, Arturo (NC)
40. Barreda, Liliana (TX)
41. Barrie, Bernard (FL)
42. Barry, Jennifer (FL)
43. Bartlett, Phillip (TX)
44. Basenese, Laura (FL)
45. Batke, Donald (TX)
46. Beale, Margarita (MI)
47. Bedgood, Laura (TX)
48. Beecher, Don (TX)
49. Bell, Ann (OR)
50. Belvin, Arthur (GA)
51. Bennett, Jon (TX)
52. Bennett, Joe (GA)
53. Berg, Petra & Sigmar (CA)
54. Berg, Maria (TX)
55. Bernstein, Jay (OH)
56. Bethel, William (TX)
57. Bhakta, Jayesh (MS)
58. Bills, Danny (TX)
59. Bird, James (FL)
60. Bixler, Lindsey M. (CA)
61. Bodiwala, Bharati (IL)
62. Bond, Edward (TX)
63. Bossert, Gerald (FL)
64. Bostanian, Stefan (CA)
65. Botero, Gabriel (TX)
66. Bouchard, Peter (FL)
67. Bourman, John (TX)
68. Bowman, Steven (FL)
69. Boyle-Jovine, Ellen (NY)
70. Broderick, Roger (FL)
71. Broman, Kent (CA)
72. Brown, Eric (TX)
73. Brown, Mark (CA)
74. Brown, Richard (FL)
75. Brown, Tom (FL) (multiple vehicles)
76. Brutsche, John (TX)
77. Bryan, David (TX)
78. Bufalini, Domenic (PA)
79. Buffam, Steven (OR)
80. Burger, Keith (CA)
81. Bustamante, Bernardo (FL)
82. Butler, Lori & James (CA)
83. Caldwell, Kim (NC)
84. Camacho, Gustavo (VA)
85. Campbell, Gordon (VA)
86. Campbell-Bartek, Kim (CA)
87. Cantrell, Janice (TX)
88. Carlson, Michelle & Chris (CA)
89. Carter, George (VA)
90. Casanova, Carlos (FL)
91. Castillion-Aguilar, Josefa (TX)
92. Caton, Wilson (VA)

LIST OF 3.0-LITER OPT-OUTS

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| 93. Cawley, Dermot (GA) | 139. Doyle, Perry (FL) |
| 94. Cephus, John (TX) | 140. Dreyer Jr., James (FL) |
| 95. Cevey, Benjamin (TX) | 141. Duncan, Douglas (GA) |
| 96. Chaffetz, Alex (CO) | 142. Driscoll, Joseph (FL) |
| 97. Chaidez, Sandra (TX) | 143. Duvall, Dustin (NV) |
| 98. Charles, Lori (TX) | 144. Dye, Sunny (TX) |
| 99. Chazanas, Demetra (CA) | 145. Dyriw, Michael (NC) |
| 100. Cheek, Beverly (TX) | 146. Dziarmaga, Piotr (CA) |
| 101. Chen, Nai-Hsin (CA) | 147. Earl, Bryan (NC) |
| 102. Chiappone, Criag (CA) (multiple vehicles) | 148. Eaton, Ronney (FL) (multiple vehicles) |
| 103. Childress, Ross (GA) | 149. Eaton, Alexander (FL) |
| 104. Christian, Don & Audrey (VA) | 150. Edinborough, Norman (FL) |
| 105. Church, William (VA) | 151. Eisenring, Dan (CA) |
| 106. Church, Lauren & Darren (VA) | 152. Elicker, Scott (PA) |
| 107. Clemens, Mark (CA) | 153. Encinas, Lupe (CA) |
| 108. Clendenen, Byron (CA) | 154. Evans, Jerry L. (CA) |
| 109. Cliffe, Jeanine (CA) | 155. Exline, April (FL) |
| 110. Cogut, Barry (WA) | 156. Faircloth, Jimmy (LA) |
| 111. Collins, Jeffery (NC) | 157. Farish, Robert (OK) |
| 112. Congdon, Galen (FL) | 158. Farmer, Perry (WA) |
| 113. Conroy, (CA) | 159. Feldman, Miles (CA) |
| 114. Cooley, Mike (ID) | 160. Felix, Joad (TX) |
| 115. Coon, Ken & Maria (CA) | 161. Felsot, Matthew (CA) |
| 116. Cordell, Ian (FL) | 162. Fernandez, Shawn (ID) |
| 117. Cornea, Alberto (NY) | 163. Fettke, Rich (CA) |
| 118. Couture, Jeremy (FL) | 164. Figueroa, Dwan (VA) |
| 119. Covey, Julie (CA) | 165. Fixman, Stella (CA) |
| 120. Creighton, Matthew (CA) | 166. Flanagan, Kyle (CA) |
| 121. Cutright, Zack (OH) | 167. Flynn, John E (OH) |
| 122. Cutting, Timothy (CA) | 168. Foley, Nicholas (TX) |
| 123. Cynthia, Hill (GA) | 169. Ford, Scott (VA) |
| 124. Daniels, Alan (CA) | 170. Freedman, Douglas (FL) |
| 125. Dark, Phillip & Michelle (TX) | 171. Frey, Paul (CO) |
| 126. Daswani, Sejal (CA) | 172. Friday, Phillip (FL) |
| 127. Davis, Toni (NC) | 173. Friend, Elma (OR) |
| 128. Davis, Kenneth (VA) | 174. Garcia, Michael (CA) |
| 129. De Colombi, Xavier F. (CA) | 175. Garcia, Ruben (TX) |
| 130. Dejesus, Carlos (FL) | 176. Garkhegag, Munkhtsetseg (CA) |
| 131. Del Hoya, Rodolfo (FL) | 177. Garon, Marguerite (WA) |
| 132. DePasquale, Gregory (TX) | 178. Garrison, John (TX) |
| 133. Derderian, Michael (CA) | 179. Gassman, Keith (TX) |
| 134. Devol, David (FL) | 180. Gates Painting Co., (WA) |
| 135. Diaz, Alma (TX) | 181. Gautier, Alexandra (CA) |
| 136. Dillard, Eleanor (NC) | 182. Gehrke, Gary (WI) |
| 137. Dolan, Robert (FL) | 183. Gilbert, Christopher (NC) |
| 138. Donaubaauer, Charles (TX) | 184. Glavan, John (CA) |

LIST OF 3.0-LITER OPT-OUTS

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| 185. Glover, John (FL) | 231. Himovitz, Roger (CA) |
| 186. Gomez, Pedro & Esther (CA) | 232. Hissing, Brad (FL) |
| 187. Gonzalez, Jose (CA) | 233. Hladik, Matthew (TX) |
| 188. Gonzalez, Armando (CA) | 234. Hodge-Rodriguez, Valerie (TX) |
| 189. Goodson, Mark (FL) | 235. Hoffman, Jude (CA) |
| 190. Goodson, David (NC) | 236. Holdings, Inc., HECO (GA) |
| 191. Gore, Gary (TX) | 237. Holst, Jens (CA) |
| 192. Graham, James (TX) | 238. Holt, Neii (CA) |
| 193. Graham, Ramon (TX) | 239. Hope, Patricia (FL) |
| 194. Graham, Karan (TX) | 240. Horne, Herbert (FL) |
| 195. Graham, Lawrence (CA) | 24. Hornedo, Robert (CA) |
| 196. Gravely, Lee Anne (TX) | 242. Horner, Michael (VA) |
| 197. Gray, James (TX) | 243. Hoyt, William (FL) |
| 198. Gregory, Brenda (VA) | 244. Huang, Xiaotei (TX) |
| 199. Grewal, Sonia (FL) | 245. Hunt, Don (TX) |
| 200. Groner, Sheldon (VA) | 246. Ina, Michael (CA) |
| 201. Grossmann, Janece (CA) | 247. Isaacson, Thomas (FL) |
| 202. Gudmundsson, Petur (FL) | 248. Ishak, Andrew (MD) |
| 203. Guerrero, John (FL) | 249. Ishmael, Imtiaz (FL) |
| 204. Guidry, Casey (LA) | 250. Issa, Anis (FL) |
| 205. Hadley, Oscar (FL) | 251. Ivey, Alan (NH) |
| 206. Halstead, Dean (VA) | 252. Jackson, Robert (FL) |
| 207. Hamblin, Roger (FL) | 253. Jackson, Patrick (VA) |
| 208. Hamilton, Shannon (TX) | 254. Jaeb, Michael (NC) |
| 209. Hansen, Lee (TX) | 255. Jaehrling, Christian (FL) |
| 210. Hanson, John (FL) | 256. James, Jeb Stuart (TX) |
| 211. Hardage, Daniel (TX) | 257. Janowicz, Janet (CA) |
| 212. Haring, Ken & Robin (CA) | 258. Janwich, William (TX) |
| 213. Harrah, Randall (TX) (multiple vehicles) | 259. Johnson, Cindy (FL) |
| 214. Hart, Valerie (GA) | 260. Johnson, Stephen (FL) |
| 215. Hartmann, Matthew & Samantha (FL) | 261. Johnson, Roslyn (GA) |
| 216. Hassett, Timothy (CA) (multiple vehicles) | 262. Johnson, Jay & Sharon (CA) (multiple vehicles) |
| 217. Hathaway, Michael (CA) | 263. Jones-Taylor, Aurelia (MS) |
| 218. Heard-O'Brien, Georgia (FL) | 264. Josey, Tommy (TX) |
| 219. Hearrell, Glenn (OR) | 265. Jung, Rod (CA) |
| 220. Hebbe, Herman (TX) | 266. Karpshukin, Sergey (FL) (multiple vehicles) |
| 221. Helbock, Michael (CA) | 267. Kaye, Stuart (FL) |
| 222. Helm, Michael (NV) | 268. Kegeyan, Marina (CA) |
| 223. Herdman, Roger (TX) | 269. Keifitz, Mikhael (FL) |
| 224. Hernly, Harold (VA) | 270. Kemmish, Kirk (FL) |
| 225. Hewitt, Thomas (FL) | 271. Kempf, Jeff (TX) |
| 226. Hickman, Carlos (TX) | 272. Kennar-VanWinkle, J (FL) |
| 227. Hicks, Doria (TX) | 273. Khalilian, Kouros J & Neda (TX) |
| 228. Hill, Katherine (TX) | 274. Kiani Khozani, Gholam (TX) |
| 229. Hill, John (MD) | |
| 230. Hillshafer, Robert (CA) (multiple vehicles) | |

LIST OF 3.0-LITER OPT-OUTS

275. Kilgore, Arion (TX)
 276. Kilne, Joshua (CA)
 277. King, Randy (TX)
 278. King, Jeffrey (FL)
 279. Kirkendall, Mary (TX)
 280. Kishkin, Tommy (TX)
 281. Koenig, Michael (TX)
 282. Krieg, Ingo (FL)
 283. Kroll, Charles (TX)
 284. Kubicki, Charles (FL)
 285. Kuhlmann, Bernt (TX)
 286. Kunze, Janet & John (CA)
 287. Kveton, Gregory (IL)
 288. Ladymon, David (TX)
 289. Ladymon, Dal (TX)
 290. Lafferman, Jeffery (MD)
 291. LaGrone, Mark (TX)
 292. Lama, Jacobo (FL)
 293. Lamb, Kevin (OR)
 294. Lammie, Robert (FL)
 295. LaMorte, Peter (CO)
 296. Lanza, Anthony (CA)
 297. Lara, Martha (IL)
 298. Larkey, Laurie (FL)
 299. Larson-Hendricks, Bret (TX)
 300. Lavoie, Mark (MA)
 301. Lee, James (CA)
 302. Lee-Clark, Sue (VA)
 303. Lenhart, Daniel (CA)
 304. Levasseur, Robert (ME)
 305. Lew, Roger (NY)
 306. Lewis, Rudolph (TX)
 307. Li, Maggie Ying (VA)
 308. Liddell, James (WA)
 309. Lippincott, Emily (CA) (multiple vehicles)
 310. Littrell, Michael (TX)
 311. Liu, Ziwen (TX)
 312. Liu, Xiaoman (NV)
 313. Lizarazo, Jinny (FL)
 314. Logue, James (MA)
 315. Lopez, Armando (CA)
 316. Lor, Rolland (TX)
 317. Lora, Alfonso (CA)
 318. Lozzi, Steve (TX)
 319. Lugger, Eric (TX)
 320. Lyons, Andy (AR)
 321. MacDowell, Alexander (CA)
 322. Madison, Scott (PA)
 323. Magnus Simonarson, Pres.,
 Consultwebs.com Inc. (NC)
 324. Mahmood, Sultan (TX)
 325. Mallek, Dale (FL)
 326. Maniaci, Anthony (TX)
 327. Manning, Patricia (CA)
 328. Manuel, Donald (LA)
 329. Martin, Joseph (MS)
 330. Martinez, Anthony (TX)
 331. Mason, Janet (NC)
 332. Massina, David (VA)
 333. Matheson, Edward (FL)
 334. Maurin, Joe (TX)
 335. Mccutcheon, Melly (TX)
 336. McDavid, Terry (VA)
 337. McGrane, Mary (TX)
 338. McKasson, Roberto (CA)
 339. McLeod, Mark (FL)
 340. McMurray, Lance (FL)
 341. McNair, Scott (SC)
 342. Medina, Gerardo (FL)
 343. Medina, Romualdo (CA)
 344. Mendoza, Eduardo (TX)
 345. Menendez, Julio (FL)
 346. Mersiosky, Mike (TX)
 347. Metwally, Essam (CA)
 348. Meyer, Stephen (FL)
 349. Michel, Helmut (FL) (multiple vehicles)
 350. Miller, Bryant (TX)
 351. Miller, William (TX)
 352. Mills, Timothy (CA)
 353. Mirkin, Andrew (MA)
 354. Mittal, Mukesh (TX)
 355. Mobley, Richard (NC)
 356. Monroe, Dimitri (CA)
 357. Moore, William (MS)
 358. Morales, Osvaldo (TX)
 359. Morehouse, Bill J. (CA)
 360. Morgan, John (VA)
 361. Moss, David (CA) (multiple vehicles)
 362. Mowry, Ann (CA)
 363. Muigai, David (TX)
 364. Mull, Mary (TX)
 365. Mullins, Verne (LA)

LIST OF 3.0-LITER OPT-OUTS

366. Mutschler, Jay (CO)
367. Naber, Dave (TX)
368. Nash, Freya (CA)
369. Naughton, Bart (CA)
370. Nelson, Barbara (TX)
371. Ngo, So V. (CA)
372. Nguyen, Kimloan (TX)
373. Nguyen, Hung (VA)
374. Nixon, Gordon & Eileen (NC)
375. Nord, Tim (OR)
376. Noriega, Jesus (FL)
377. Novello, Frank (FL)
378. OBrien, Dermot (FL)
379. Olick, Alan (CA)
380. Olsen, Donald (IL)
381. Opyt, Betsy (FL)
382. Ordes, Don (ID) (multiple vehicles)
383. Orozco, Angelica (CA)
384. Ortegon, Ricardo (TX)
385. Osama, Sayed (MI)
386. Palmer, David (FL)
387. Panaitescu, Ioan (CA)
388. Pappas, Harry (MD)
389. Paredes, Jose (CA)
390. Paris, Steve (KS)
391. Park, Joonho (TX)
392. Parks, Chris (CA)
393. Patel, Pranav (FL)
394. Patel, Hetal (WI)
395. Patel, Sanjay (CA)
396. Patel, Hiren D. (CA)
397. Patel, Baldev (PA)
398. Patzau, Thomas (CA)
399. Paulino, Carlos (VA) (multiple vehicles)
400. Penn, Wesley (FL)
401. Pennington, Dan (CA)
402. Pidcock, Donald (TX)
403. Pierce, Todd (CO)
404. Pinti, Marcelo (TX)
405. Plunkett, Joseph (FL)
406. Podrat, Charlotte (CA)
407. Poindexter, Josh (VA)
408. Postin, Jerrold (FL)
409. Potts, James (TX)
410. Powell, Charissa (FL)
411. Pryor, Robert (FL)
412. Psutka, John (BC)
413. Purkiss, Marcus (AE)
414. Quintero, Jorge (FL)
415. Raju, Sridher (TX)
416. Ramming, Mike and Karen (VA)
417. Randolph, Sedreck (VA)
418. Ranganath, Ramakrishnan (TX)
419. Readyhough, Joseph (TX)
420. Reavy, George (PA) (multiple vehicles)
421. Reed, William (WA)
422. Reed, Greg (CA)
423. Reeder, Carol (FL)
424. Reginato, Richard (CA)
425. Resnick, Ilene (CA)
426. Reyes, Luis (TX)
427. Riedel, Gregory (TX)
428. Rightmer, Jennifer (TX)
429. Rimmer-Adcock, Nicole (TX)
430. Rios, Aurora (TX)
431. Rios, Francisco (CT)
432. Rizer, Jeffery (VA)
433. Roberts, William (MD)
434. Rodriguez, Simon (TX)
435. Rodriguez, Raul (TX)
436. Rodriguez, Jerry (FL)
437. Roesh, Erik (TX)
438. Rogers, George (IL)
439. Rogers, Jared (CO)
440. Rohan, John (CA)
441. Roman, Carol-Lynn (FL)
442. Romero, Bryant & Irene (CA)
443. Rosales, Cora (TX)
444. Rouse, Fiona (CA)
445. Rowder, Nicholas (TX)
446. Ruiz, Timothy (TX)
447. Rush, Christopher & Mikaela (TX)
448. Rutstein, Adam (FL)
449. Saari, Robert (CA)
450. Sadeghi, Samira (CA)
451. Sakovich, Tatiana (WA)
452. Saktanaset, Eddie (NH)
453. Salahi, Bahram (NJ)
454. Salazar, Paul (TX)
455. Salm, Richard (FL)
456. Salzberg, Mitchell (TX)
457. Sampsel, Douglas (GA)

LIST OF 3.0-LITER OPT-OUTS

458. Sanders, Melissa (LA)
459. Sanldierna, Rodolfo (TX)
460. Santini, Livio (CA)
461. Sanwick, Luke (CA)
462. Schellentrager, James (OR)
463. Schilling, Thomas (WI)
464. Schmidt, Andreas (CA)
465. Schnelwar, Hedy (FL)
466. Schultze, Marianne (GA)
467. Schur, Renee (MT)
468. Scott, Frank (FL)
469. Seal, David & Jessica (NC)
470. Sears, Richard (CA)
471. Seerden, Michael (TX)
472. Seneca, Michael (FL)
473. Serdyuk, Sergiy (FL)
474. Shannon, David (CA)
475. Shapiro, David B (UT)
476. Shapiro, Steve G (UT)
477. Shen, Charles (CA)
478. Sheridan, James & Jennifer (FL)
479. Shilling, Kathryn (TX)
480. Siegel, Barry (NC)
481. Siegel (Tru-Pak Moving System), John (NC)
482. Silva, Dannette (CA)
483. Simmons, Elton (TX)
484. Simon, Robert (NC)
485. Simons, Kevin (CO)
486. Singh, Manjeet (TX)
487. Singh, Pirtal (TX)
488. Smith, Robert (TX)
489. Smith, Frederick (CA)
490. Smith, Jamie (OR)
491. Snellman, Jussi (WI)
492. Solis, Carlos (FL)
493. Solovyova, Amy (CA)
494. Sonderfan, Paul (TX)
495. Sonn, Laurence (FL)
496. Soucy, Dennis (FL)
497. Spaulding, Christian (CA)
498. Spiegel, Jeremy (VA)
499. Spragins, Robert (TX)
500. Stanek, Mark (TX)
501. Stangel, Barry (NY)
502. Stanislaus, Mareeni (CA)
503. Starke, Pam (GA)
504. Starr, Todd (CO)
505. Stevens, Calvin (NC)
506. Stevenson, Michael (NC)
507. Stock, Jerome (FL) (multiple vehicles)
508. Stokes, Thomas (NC)
509. Straszewski, Daniel (CA)
510. Stratton, Gus (CA)
511. Sturr, Laura (CA)
512. Suh, Wonsuk (CA)
513. Suh, Peter (CA)
514. Sullivan, James (GA)
515. Sullivan, Harlan (WA)
516. Sumsion, David (UT) (multiple vehicles)
517. Sutherland, Robert (TX)
518. Sutton, Leland (TX)
519. Svenson, Rodney (MT)
520. Sweeny, Michael (VA)
521. Syed, Aamir (VA)
522. Talley, Todd (CA)
523. Tang, Daniel (CA)
524. Thiel, Charles (MI)
525. Thomson, Camille (NC)
526. Tidwell, Mark (TX)
527. Tiebauer, Eric (MS)
528. Tillman, Clyde (NC)
529. Toczauer, Tibor (CA)
530. Todd, Patrick S (TX)
531. Todorovic, Vanja (FL)
532. Tomson, Lee (FL)
533. Tongier, W. Kendall (TX)
534. Trane, Frank (CA)
535. Travaglia-Heylbroeck, Carlos (FL)
536. Tsang, Denny (GA)
537. Uitzetter, Rolf (CA)
538. Uitzetter, Sherman (NC)
539. Umali, Dexter (CA)
540. Valdes, Adalberto (TX)
541. Valle, Marie (CA)
542. Varvoutis, Ernest (FL)
543. Vautier, David (NJ)
544. Vawter, Rob & Anne (VA)
545. Vazquez, Shelby (TX)
546. Velasquez, Deborah (MI)
547. Vernon, kia (NC)
548. Vila, Claire (FL)

LIST OF 3.0-LITER OPT-OUTS

- 549. Vitale, Layla (CA)
- 550. Voorkamp, Tim (TX)
- 551. Voss, Matthew & Samantha (TX)
- 552. Vrana, Leslie (CA)
- 553. Wang, Charles (CA)
- 554. Warncke, Mike (CA)
- 555. Warren, Audrey (TX)
- 556. Waters, Michael (TX)
- 557. Watts, Mike (TX)
- 558. Waymire, Pamela & Jerry (CA)
- 559. Weatherly, Brad (TX)
- 560. Weber, Klaus & Maryann (FL)
- 561. Weisman, Robert (TX)
- 562. Weiss, Jack (LA)
- 563. Weiss, Steven (CA)
- 564. Wells, Scott (TX)
- 565. Wells, Sheila (TX)
- 566. Wenholz, David (TX)
- 567. Wequip Pacific Leasing Inc, (CA)
- 568. Westerman, Mark (TX)
- 569. Whatley, Barbara (TX)
- 570. Wheeler, John (FL)
- 571. Wheeler, Dr. Rochelle (WA)
- 572. Whiteherse, Barbara (FL)
- 573. Wilkins, Darrick (GA)
- 574. Wilkinson, Jenny (TX)
- 575. Williams, Phillip (NC)
- 576. Wilson, Thomas (TX)
- 577. Winston, Chris (CA)
- 578. Wolfson, Alan (FL)
- 579. Wolgamott, Jennifer (FL)
- 580. Woodall, Jeffrey (NC)
- 581. Woody, Paulette (TX)
- 582. Worden, Todd (VA)
- 583. Wreschner, Herbert (FL)
- 584. Wu, Jian (CA)
- 585. Wuaku, Helen (CA)
- 586. Wyatt, Felicie (MS)
- 587. Yarbrough, James (TX)
- 588. Young, Robert (FL)
- 589. Zernickow, Jon (CA)
- 590. Zimbelman, Adam (TX)
- 591. Zipps, Melissa (TX)
- 592. Zoetewey, James (CA)
- 593. Zundel, Terry (WA)